

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PACIFIC BIOSCIENCE
LABORATORIES, INC., a Washington
corporation,

Plaintiff,

v.

MICHAEL TODD TRUE ORGANICS LP,
a Delaware limited partnership; MTTO
LLC, a Delaware limited liability company,

Defendants.

No.

COMPLAINT FOR PATENT
INFRINGEMENT

JURY DEMAND

Plaintiff Pacific Bioscience Laboratories, Inc. (“PBL”), for its Complaint for Patent Infringement against Defendants Michael Todd True Organics LP and MTTO LLC, (collectively, “MTTO”), hereby alleges, by and through its attorney, on personal knowledge as to its own actions and on information and belief as to the actions of others, as follows:

I. INTRODUCTION

1. Plaintiff PBL dramatically changed the market for skin cleansing products when it introduced its innovative Clarisonic Sonic Skin Cleansing System (the “Clarisonic System”) in 2004. The Clarisonic System employs motion and forces at sonic frequencies to cleanse, soften, and smooth skin.

1 2. Prior to the introduction of the Clarisonic System, there were no sonic facial
2
3 cleansing devices on the market. PBL created today’s market for such products.

4
5 3. The Clarisonic System has been an enormous success and has achieved national
6
7 recognition and awards. In 2010, PBL was named one of Inc. 500’s Fastest Growing Private
8
9 Companies.

10
11 4. PBL received broad protection for its innovations, including utility and design
12
13 patents. However, PBL’s innovations have been the subject of widespread imitation by others,
14
15 who have attempted to capitalize on PBL’s success.

16
17 5. Defendant MTTO is one such imitator. After seeing PBL’s success, MTTO
18
19 introduced its Soniclear facial cleansing system (“Soniclear”). MTTO has made the Soniclear
20
21 work like PBL’s products, thereby infringing PBL’s patent.

22
23 6. MTTO sells or has sold the Soniclear throughout the United States through
24
25 MTTO’s own website, [http://www.michaeltoddusa.com/soniclear-antimicrobial-cleansing-](http://www.michaeltoddusa.com/soniclear-antimicrobial-cleansing-system/soniclear.html)
26
27 [http://www.amazon.com/Soniclear-](http://www.amazon.com/Soniclear-Anti-microbial-Skin-Cleansing-System/dp/B00MNNGRLL/)
28
29 [Anti-microbial-Skin-Cleansing-System/dp/B00MNNGRLL/](http://www.amazon.com/Soniclear-Anti-microbial-Skin-Cleansing-System/dp/B00MNNGRLL/).

30
31 7. PBL seeks to stop MTTO’s infringing conduct and obtain compensation for the
32
33 violations that have occurred thus far.

34
35 **II. PARTIES**

36
37 8. Plaintiff PBL is a Washington corporation incorporated in January 2001, with its
38
39 principal place of business at 17275 NE 67th Court, Redmond, WA 98052.

40
41 9. In December 2011, PBL was acquired by L’Oréal S.A., a French société anonyme
42
43 (“L’Oréal”). L’Oréal is the owner, and PBL is the exclusive U.S. licensee with the right, *inter*
44
45 *alia*, to bring suit, of protectable patent rights as described herein.

46
47 10. On information and belief, Michael Todd True Organics LP is a limited
48
49 partnership organized and existing under the laws of Delaware with its principal place of
50
51 business at 648 SW Port St. Lucie Blvd., Port St. Lucie, FL 34953-1947.

1 11. On information and belief, MTTO LLC is a limited liability company organized
2 and existing under the laws of Delaware with its principal place of business at 648 SW Port St.
3 Lucie Blvd., Port St. Lucie, FL 34953-1947.
4

5
6 12. On information and belief, MTTO manufactures, markets, and sells electric skin
7 care devices under the name Soniclear.
8
9

10
11 **III. JURISDICTION AND VENUE**

12 13. This case arises under the patent laws of the United States, 35 U.S.C. § 101 et seq.
13

14 14. The Court has subject matter jurisdiction over this case pursuant to 28 U.S.C.
15 §§ 1331, 1332, and 1338.
16

17 15. PBL has its principal place of business in this District, and makes its Clarisonic
18 devices available for sale in this District.
19
20

21 16. This Court has personal jurisdiction over MTTO because, on information and
22 belief, MTTO has committed and continues to commit the acts violating PBL’s intellectual
23 property described herein within the State of Washington, including in this District, and places
24 infringing products into the stream of commerce, with the knowledge or understanding that such
25 products are sold in the State of Washington, including in this District.
26
27
28
29
30
31

32 17. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), (c), and 28
33 U.S.C. § 1400(b) because, *inter alia*, PBL’s principal place of business is within this District and
34 PBL suffered harm in this District, because a substantial part of the events giving rise to the
35 claims against MTTO occurred and are occurring in this District, and because MTTO transacts
36 business within this District and offers for sale in this District products that infringe PBL’s
37 intellectual property.
38
39
40
41
42
43

44 **IV. BACKGROUND**

45 18. Since the early 2000s, PBL has designed, developed, manufactured, marketed,
46 and sold in the United States (and worldwide) its innovative Clarisonic System, which is a line of
47 skin care products including a number of Sonic Cleansing Brushes and accessories, the
48
49
50
51

1 Clarisonic Opal® Sonic Infusion System, and targeted treatment solutions. Examples of
2
3 Clarisonic products are pictured below:
4



5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21 19. The Clarisonic System was developed by PBL over many years at great expense
22 and effort and represents a breakthrough in devices and methods for treatment of early stage acne
23 and for effective cleansing of skin. Those devices and methods employ motion and forces at
24 sonic frequencies to cleanse, soften, and smooth skin. They alleviate clogged pores and remove
25 debris from skin more gently and effectively than alternative devices or methods, such as manual
26 cleansing.
27
28
29
30
31

32
33 20. The innovations embodied in the Clarisonic System are protected by numerous
34 United States and foreign intellectual property rights, including rights deriving from patents.
35

36
37 21. Prior to the introduction of the Clarisonic System, there were no sonic facial
38 cleansing devices on the market. Indeed, before development of the Clarisonic System, no
39 market existed for sonic skin care devices. PBL expended considerable resources to create the
40 sonic skin care market and to educate the public regarding facial cleansing, as well as to market
41 its sonic facial cleansing devices.
42
43
44
45

46
47 22. Since its introduction, the Clarisonic System has become widely acclaimed by
48 professionals and consumers, and has garnered many media awards from sources such as
49 authoritative magazines in the beauty industry, Oprah's Favorite Things in 2007 on the Oprah
50
51

1 Winfrey Show, Best of Sephora in 2007 and 2008, and QVC Customer Choice in 2008, 2009,
2 and 2010.
3

4 23. The success of the Clarisonic System has spurred a large number of imitations,
5 such as MTTO's Soniclear, pictured below.
6
7



8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 **V. PBL'S PATENT**

28
29 **U.S. Patent No. 7,320,691**

30
31 24. U.S. Patent No. 7,320,691 ("the '691 patent") issued on January 22, 2008, and is
32 entitled "Apparatus and Method for Acoustic/Mechanical Treatment of Early Stage Acne." The
33 inventors are Kenneth A. Pilcher, David Giuliani, and Stephen M. Meginniss.
34

35
36 25. A copy of the '691 patent is attached as Exhibit 1.
37

38
39 26. PBL is the exclusive licensee having all substantial rights in and to the '691
40 patent, with the rights to bring enforcement actions for past, present and future infringement and
41 to collect damages for past infringement.
42

43
44 27. The '691 patent has been reexamined pursuant to Reexamination Request Nos.
45 90/009,797 and 90/011,343. The patentability of all of the originally issued claims 1-52 of the
46 '691 patent was confirmed pursuant to these reexamination requests, and claims 53-64 were
47 added. A reexamination certificate issued on September 20, 2011. *See* Exhibit 1.
48
49
50
51

1 28. The '691 patent is valid, enforceable, and currently in full force and effect.
2

3 **CLAIM I – INFRINGEMENT OF THE '691 PATENT**
4

5 29. PBL hereby incorporates and realleges Paragraphs 1 - 28 as if fully set forth
6 herein.
7

8
9 30. MTTO has been and/or is directly infringing one or more claims of the '691
10 patent pursuant to 35 U.S.C. § 271(a), literally or under the doctrine of equivalents, by making,
11 using, offering to sell, and/or selling in the United States and/or importing into the United States,
12 products, devices, or systems that are covered by the '691 patent, including the Soniclear.
13
14

15 31. PBL has consistently and continuously marked its products with the '691 patent
16 number pursuant to 35 U.S.C. § 287 and has provided constructive notice of the '691 patent.
17 PBL seeks monetary and all other damages permitted by statute.
18
19

20 32. MTTO's infringement of the '691 patent has been and will continue to be willful
21 and deliberate, by making, using, offering to sell, and/or selling in the United States and/or
22 importing into the United States, infringing devices despite that such actions constitute
23 infringement and despite being at least on constructive notice that its actions constitute
24 infringement.
25
26

27 33. MTTO's infringement of the '691 patent has caused and will continue to cause
28 PBL substantial and irreparable injury, for which PBL is entitled to all of the relief provided by
29 35 U.S.C. §§ 281, 283, 284, and 285, including but not limited to injunctive relief, compensatory
30 damages not less than the amount of a reasonable royalty, interest, costs, enhanced damages, and
31 reasonable attorney's fees, as the court deems just and appropriate.
32
33

34 **VI. DEMAND FOR JURY TRIAL**
35

36 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, PBL respectfully requests a
37 trial by jury of all issues properly triable by jury.
38
39

40 **VII. PRAYER FOR RELIEF**
41

42 WHEREFORE, PBL prays for relief, as follows:
43
44

1 A. A judgment that MTTO has infringed one or more claims of the '691 patent;

2
3 B. An order and judgment preliminarily and permanently enjoining MTTO and its
4 officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in
5 privity or in concert with them, and their investors, partners, parents, subsidiaries, divisions,
6
7 successors, and assigns, from further acts of infringement of PBL's asserted patent;
8

9
10 C. A judgment awarding PBL all damages adequate to compensate for MTTO's
11 infringement of PBL's asserted patent, and in no event less than a reasonable royalty for
12
13 MTTO's acts of infringement, including all pre-judgment and post-judgment interest at the
14
15 maximum rate permitted by law;
16

17
18 D. A judgment declaring that MTTO's infringement of the asserted patent has been
19
20 willful and deliberate;
21

22
23 E. A judgment awarding PBL all damages, including treble damages, as a result of
24
25 MTTO's willful and deliberate infringement of the asserted patent, pursuant to 35 U.S.C. § 284,
26
27 together with pre-judgment and post-judgment interest;
28

29
30 F. A judgment declaring that this case is exceptional and awarding PBL its expenses,
31
32 costs, and attorney's fees in accordance with 35 U.S.C. §§ 284 and 285 and Rule 54(d) of the
33
34 Federal Rules of Civil Procedure; and

35 G. Such other and further relief as the Court deems just and proper.
36

37 DATED: May 1, 2015.

Respectfully submitted,

38
39
40 By: s/ Ramsey M. Al-Salam

Ramsey M. Al-Salam WSBA #18822

Perkins Coie LLP

1201 Third Avenue, Suite 4900

Seattle, WA 98101-3099

Tel: (206) 359-8000

Fax: (206) 359-9000

Email: RAlsalam@perkinscoie.com

Attorneys for Plaintiff

Pacific Bioscience Laboratories, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

COUNSEL:

Robert M. Masters (*pro hac to be submitted*)
Timothy P. Cremen (*pro hac to be submitted*)
Lisa Y. Leung (WSBA No. 43015)
PAUL HASTINGS LLP
875 15th St. NW
Washington, D.C. 20005
Tel: (202) 551-1700
Fax: (202) 551-1705
robertmasters@paulhastings.com
timothy cremen@paulhastings.com
lisaleung@paulhastings.com

Robert L. Sherman (*pro hac to be submitted*)
Natalie G. Furman (*pro hac to be submitted*)
PAUL HASTINGS LLP
75 East 55th Street
New York, NY 10022
Tel: (212) 318-6000
Fax: (212) 230-7841
robertsberman@paulhastings.com
nataliefurman@paulhastngs.com