

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

CHARLES R. BAKER,)	
)	
Plaintiff,)	Case No. _____
)	
v.)	JURY DEMANDED
)	
BAYER AKTIENGESELLSCHAFT)	
CORPORATION d/b/a Bayer AG;)	
BAYER CORPORATION; BAYER)	
HEALTHCARE, LLC; and)	
BAYER HEALTHCARE)	
PHARMACEUTICALS, INC.,)	
)	
Defendants.)	

COMPLAINT FOR FALSE PATENT MARKING

Plaintiff CHARLES R. BAKER (hereinafter “Baker” or “Plaintiff”), for his Complaint against Defendants BAYER AKTIENGESELLSCHAFT CORPORATION d/b/a Bayer AG, BAYER CORPORATION, BAYER HEALTHCARE, LLC, and BAYER HEALTHCARE PHARMACEUTICALS, INC. (hereinafter collectively referred to as “Defendant Bayer” or “Defendant”), alleges as follows:

NATURE OF THE CASE

1.

This is a *qui tam* action on behalf of the public for false patent marking under Title 35, Section 292, of the United States Code.

2.

As set forth in detail below, Defendant Bayer has violated 35 U.S.C. § 292(a) by marking certain of its Cipro ®, Ciprodex ®, Fludara ®, Legend ®, and Proleukin ® products with various United States patent numbers, even though said patents are expired. On information and belief,

Defendant marks certain of its Cipro[®], Ciprodex[®], Fludara[®], Legend[®], and Proleukin[®] branded products with the expired patents with the intent to deceive competitors and the public, and to gain a competitive advantage in the market.

3.

Plaintiff seeks an award of monetary damages against Defendant pursuant to 35 U.S.C. § 292 (b) of up to \$500 for each offense, with one-half going to the use of the United States and the other half going to the person bringing the action.

THE PARTIES

4.

Plaintiff is a person residing in Lakeland, Tennessee.

5.

Defendant BAYER AKTIENGESCELLSCHAFT CORPORATION d/b/a Bayer AG is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania. Defendant's registered agent for service of process is The Company Corporation, 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

6.

Defendant BAYER CORPORATION is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania. Defendant's registered agent for service of process is Corporation Service Company, 2908 Poston Avenue, Nashville, TN 37203.

7.

Defendant BAYER HEALTHCARE, LLC, is a Delaware corporation with its principal place of business in Tarrytown, New York. Defendant's registered agent for service of process is Corporation Service Company, 2908 Poston Avenue, Nashville, TN 37203.

8.

Defendant BAYER HEALTHCARE PHARMACEUTICALS, INC., is a Delaware corporation with its principal place of business in Wayne, New Jersey. Defendant's registered agent for service of process is Corporation Service Company, 2908 Poston Avenue, Nashville, TN 37203.

JURISDICTION AND VENUE

9.

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

10.

Venue is proper in this District under 28 U.S.C. §§ 1391(c) and 1395(a) because, at least in part, Defendant Bayer's products that are the subject-matter of this Complaint, were and are advertised, offered for sale, and sold within this District.

11.

This Court has personal jurisdiction over Defendant Bayer because Defendant has sold and continues to sell falsely marked products in Tennessee and in this District, and/or in the streams of commerce with knowledge that said products would be sold in Tennessee and in this District. Upon information and belief, such sales by Defendant are substantial, continuous, and systematic.

12.

Plaintiff brings this action under 35 U.S.C. § 292(b), which provides that any person may sue for civil money penalties for false patent marking.

GENERAL ALLEGATIONS

13.

Defendant Bayer has in the past manufactured and marketed (or caused to be manufactured and marketed), and presently manufactures and markets (or causes to be manufactured and marketed), products for sale to the general consuming public, including Baytril ®, Cipro ®, Ciprodex ®, Fludara ®, Legend ®, and Proleukin ®.

14.

Specifically, Defendant Bayer has and continues to market the following: Baytril ®, a veterinary product, is a fluoroquinolone antibiotic used to treat many certain kinds of bacterial infections in dogs and cats; Cipro ® is a fluoroquinolone antibiotic used to treat certain kinds of bacterial infections in humans; Ciprodex ® is an ear drop containing ciprofloxacin and dexamethasone, used to treat middle ear infections typically contracting by children; Fludara ® is a chemotherapy drug, commonly used to treat chronic lymphocytic leukemia; Legend ®, a veterinary product, is a hyaluronate sodium product designed to treat acute joint damage in horses; and Proleukin ® is a chemotherapy drug, usually used for advanced renal cell cancer or advanced melanoma.

15.

Baytril ®, including its packaging and/or labeling, have been and continue to be marked with United States patent number 4,670,444 (hereinafter referred to as the “ ‘444 Patent”).

16.

The ‘444 Patent has expired, but Defendant Bayer nevertheless continues using the improper patent marking on Baytril ®, with the intent to deceive the public and to gain competitive advantage in the market.

17.

Cipro ® and/or its packaging have been and continue to be marked with the ‘444 patent referenced in paragraphs 15 and 16, above, as well as United States patent number 4,844,902 (hereinafter referred to as the “ ‘902 Patent”).

18.

The ‘444 Patent and ‘902 Patent have expired, but Defendant Bayer nevertheless continues using the improper patent markings on Cipro ®, with the intent to deceive the public and to gain competitive advantage in the market.

19.

In addition, Ciprodex ® and/or its packaging have been and continue to be marked with the ‘902 patent referenced in paragraphs 17 and 18, above.

20.

Again, although the ‘902 Patent has expired, Defendant Bayer nevertheless continues using the improper patent marking on Ciprodex ®, with the intent to deceive the public and to gain competitive advantage in the market.

21.

Fludara ® and/or its packaging have been and continue to be marked with United States patent number 4,357,324 (hereinafter referred to as the “ ‘324 Patent”).

22.

The ‘324 Patent has expired, but Defendant Bayer nevertheless continues using the improper patent marking on Fludara ®, with the intent to deceive the public and to gain competitive advantage in the market.

23.

Legend ® and/or its packaging have been and continue to be marked with United States patent number 4,808,576 (hereinafter referred to as the “ ‘576 Patent”).

24.

The ‘576 Patent has expired, but Defendant Bayer nevertheless continues using the improper patent marking on Legend ®, with the intent to deceive the public and to gain competitive advantage in the market.

25.

Proleukin ® and/or its packaging have been and continue to be marked with the following United States patent numbers: 4,530,787; 4,569,790; 4,604,377; 4,748,234; 4,572,798; 4,853,332; and 4,959,314 (hereinafter referred to as the “ ‘787 Patent,” the “ ‘790 Patent,” the “ ‘377 Patent,” the “ ‘234 Patent,” the “ ‘798 Patent,” the “ ‘332 Patent,” and the “ ‘314 Patent,” respectively).

26.

Although the ‘787 Patent, ‘790 Patent, ‘377 Patent, ‘234 Patent, ‘798 Patent, ‘332 Patent, and ‘314 Patent have all expired, Defendant Bayer nevertheless continues using the improper patent markings on Proleukin ®, with the intent to deceive the public and to gain competitive advantage in the market.

27.

When a patent expires, all monopoly rights to the patent terminate irrevocably. Therefore, a product marked with an expired patent is not currently patented by such expired patent. In other words, the product is unpatented.

28.

Marking products with expired patents is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products, which, in turn, causes harm to the consuming public, including Plaintiff, by quelling product innovation and price competition.

29.

Defendant Bayer is a sophisticated company with many decades of experience applying for and obtaining patents, and therefore knows that patents do not have an indefinite duration but, rather, expire.

30.

Upon information and belief, Defendant Bayer employs an in-house legal department.

31.

Upon information and belief, attorneys in Defendant Bayer's in-house legal department are responsible for Defendant's intellectual property and marketing, labeling, and advertising law.

33.

Defendant Bayer by itself or by its representatives cannot genuinely believe that a patent does not expire, and that prospective patent rights apply even after its expiration.

34.

Defendant Bayer knew that both the '444 Patent, marked on Baytril ® as identified herein, had expired. Also, Defendant knew that the same '444 Patent, as well as the '902 Patent, both marked on Cipro ® as identified herein, had expired. Furthermore, Defendant knew that the same '902 Patent was expired when it was marked on Ciprodex ®, as identified herein.

Similarly, Defendant knew that '324 Patent, marked on Fludara ® as identified herein, had expired. Additionally, Defendant knew that the '576 Patent, marked on Legend ® as identified herein, had expired. Finally, Defendant knew that the '787 Patent, '790 Patent, '377 Patent, '234 Patent, '798 Patent, '332 Patent, and '314 Patent, each marked on Proleukin ® as identified herein, had all expired.

35.

After the '444 Patent expired, Defendant Bayer marked, or caused to be marked, said expired patent number upon Baytril ®, including its packaging and/or labeling. Also, after the '444 Patent and '902 Patent expired, Defendant marked, or caused to be marked, said expired patent numbers upon Cipro ®, including its packaging and/or labeling. Similarly, after the '902 Patent expired, Defendant marked, or caused to be marked, said expired patent number upon Ciprodex ®, including its packaging and/or labeling. Additionally, after the '324 Patent expired, Defendant marked, or caused to be marked, said expired patent number upon Fludara ®, including its packaging and/or labeling. Furthermore, after the '576 Patent expired, Bayer marked, or caused to be marked, said expired patent number upon Legend ®, including its packaging and/or labeling. Finally, after the expiration of the '787 Patent, '790 Patent, '377 Patent, '234 Patent, '798 Patent, '332 Patent, and '314 Patent, Bayer marked, or caused to be marked, said expired patent numbers upon Proleukin ®, including its packaging and/or labeling.

36.

Defendant Bayer knew that the patents marked on the products identified herein were expired during time periods Defendant was marking products with such expired patents.

37.

Because all monopoly rights in the aforementioned expired patents have terminated, Defendant Bayer cannot have any reasonable belief that Baytril ®, Cipro ®, Ciprodex ®, Fludara ®, Legend ®, and Proleukin ® are patented or otherwise covered by the expired patents marked upon the packaging of these products.

38.

By repeatedly marking Baytril ®, Cipro ®, Ciprodex ®, Fludara ®, Legend ®, and Proleukin ® with expired patents, Defendant Bayer has committed numerous violations of 35 U.S.C. § 292(a).

39.

Defendant Bayer has committed such violations of 35 U.S.C. § 292(a) with an intent to deceive competitors and the public.

40.

Plaintiff seeks an award of monetary damages against Defendant Bayer, one half of which shall be paid to the United States pursuant to 35 U.S.C. § 292(b).

COUNT ONE: THE '444 PATENT (BAYTRIL ®)

41.

Plaintiff restates and incorporates the foregoing paragraphs as if fully set forth herein.

42.

United States Patent Number 4,670,444 was filed on May 29, 1984, and issued on June 2, 1987. (Please see United States Patent No. 4,670,444, attached hereto as Exhibit 'A').

43.

The '444 Patent expired on December 9, 2007 (following receipt of a three-year extension). (Please see "Certificate Extending Patent Term," attached hereto as Exhibit 'B').

44.

Defendant Bayer marketed for sale to the public the product known as Baytril ®, marked with the '444 Patent.

45.

Defendant Bayer violated 35 U.S.C. § 292(a) by marking, or causing to be marked, the packaging, labeling, and/or product commonly known as Baytril ® with the '444 Patent, and any and all other products marked with the '444 Patent, subsequent to the date the patent expired with the intent to deceive the public.

46.

Upon information and belief, Defendant Bayer knew, on or about the date of expiration, that the '444 Patent had expired.

47.

Defendant Bayer cannot genuinely believe that the '444 Patent applies even after it expired.

48.

Upon information and belief, Defendant Bayer is a sophisticated company and has many decades of experience applying for, obtaining, and litigating patents. Defendant has committed a substantial amount of its resources to patent procurement and enforcement. Upon information and belief, Defendant has an in-house legal department and attorneys working therein are responsible for Defendant's intellectual property and marketing, labeling, and advertising law.

As a sophisticated company, with in-house legal counsel that regularly handles patent matters, including but not limited to patent procurement and patent-related litigation, Defendant is aware of the requirements of 35 U.S.C. § 292.

49.

Defendant Bayer has falsely marked Baytril ® as described with the intent to deceive the public, in violation of 35 U.S.C. § 292(a).

50.

Each false marking on the product(s) identified is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

51.

Defendant Bayer's false marking of products with the '444 Patent after it expired has wrongfully quelled competition with respect to such products, thereby causing harm to Plaintiff, the United States, and the general public.

52.

Defendant Bayer wrongfully and illegally advertised a patent monopoly which it did not possess and, as a result, has benefitted commercially and financially by maintaining false statements of patent rights.

WHEREFORE, Plaintiff demands a trial by jury and requests that the Court enter judgment as follows:

- (a) Enter judgment against Defendant and in favor of Plaintiff for the violations alleged in this Complaint;

- (b) Order Defendant to pay a civil monetary fine of up to five hundred dollars (\$500) per false marking “offense” (or falsely marked article), or an alternative amount as determined by the Court, one-half of which shall be paid to the United States;
- (c) Order Defendant to pay discretionary costs and prejudgment interest;
- (d) Award attorney’s fees to plaintiff pursuant to 35 USC § 285;
- (e) Order an accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products; and
- (f) Grant Plaintiff such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

COUNT TWO: THE ‘444 PATENT (CIPRO ®)

53.

Plaintiff restates and incorporates the foregoing paragraphs as if fully set forth herein.

54.

United States Patent Number 4,670,444 was filed on May 29, 1984, and issued on June 2, 1987. (Please see United States Patent No. 4,670,444, attached hereto as Exhibit ‘A’).

55.

The ‘444 Patent expired on December 9, 2007 (following receipt of a three-year extension). (Please see “Certificate Extending Patent Term,” attached hereto as Exhibit ‘B’).

56.

Defendant Bayer marketed for sale to the public the product known as Cipro ®, marked with the ‘444 Patent.

57.

Defendant Bayer violated 35 U.S.C. § 292(a) by marking, or causing to be marked, the packaging, labeling, and/or product commonly known as Cipro[®] with the '444 Patent, and any and all other products marked with the '444 Patent, subsequent to the date the patent expired with the intent to deceive the public. (Please see Cipro[®] Labels (Cipro[®] HC at p. 4 of 5, Cipro[®] HC OTIC at p. 4 of 5), attached hereto as Exhibit 'C').

58.

Upon information and belief, Defendant Bayer knew, on or about the date of expiration, that the '444 Patent had expired.

59.

Defendant Bayer cannot genuinely believe that the '444 Patent applies even after it expired.

60.

Upon information and belief, Defendant Bayer is a sophisticated company and has many decades of experience applying for, obtaining, and litigating patents. Defendant has committed a substantial amount of its resources to patent procurement and enforcement. Upon information and belief, Defendant has an in-house legal department and attorneys working therein are responsible for Defendant's intellectual property and marketing, labeling, and advertising law. As a sophisticated company, with in-house legal counsel that regularly handles patent matters, including but not limited to patent procurement and patent-related litigation, Defendant is aware of the requirements of 35 U.S.C. § 292.

61.

Defendant Bayer has falsely marked Cipro ® as described with the intent to deceive the public, in violation of 35 U.S.C. § 292(a).

62.

Each false marking on the product(s) identified is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

63.

Defendant Bayer's false marking of products with the '444 Patent after it expired has wrongfully quelled competition with respect to such products, thereby causing harm to Plaintiff, the United States, and the general public.

64.

Defendant Bayer wrongfully and illegally advertised a patent monopoly which it did not possess and, as a result, has benefitted commercially and financially by maintaining false statements of patent rights.

WHEREFORE, Plaintiff demands a trial by jury and requests that the Court enter judgment as follows:

- (a) Enter judgment against Defendant and in favor of Plaintiff for the violations alleged in this Complaint;
- (b) Order Defendant to pay a civil monetary fine of up to five hundred dollars (\$500) per false marking "offense" (or falsely marked article), or an alternative amount as determined by the Court, one-half of which shall be paid to the United States;
- (c) Order Defendant to pay discretionary costs and prejudgment interest;
- (d) Award attorney's fees to plaintiff pursuant to 35 USC § 285;

- (e) Order an accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products; and
- (f) Grant Plaintiff such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

COUNT THREE: THE '902 PATENT (CIPRO ®)

65.

Plaintiff restates and incorporates the foregoing paragraphs as if fully set forth herein.

66.

United States Patent Number 4,844,902 was filed on February 11, 1988, and issued on July 4, 1989. (Please see United States Patent No. 4,844,902, attached hereto as Exhibit 'D').

67.

The '902 Patent expired on February 11, 2008.

68.

Defendant Bayer marketed for sale to the public the product known as Cipro ®, marked with the '902 Patent.

69.

Defendant Bayer violated 35 U.S.C. § 292(a) by marking, or causing to be marked, the packaging, labeling, and/or product commonly known as Cipro ® with the '902 Patent, and any and all other products marked with the '902 Patent, subsequent to the date the patent expired with the intent to deceive the public. (Please see Cipro ® Labels (Cipro® HC at p. 4 of 5, Cipro® HC OTIC at p. 4 of 5), attached hereto as Exhibit 'C').

70.

Upon information and belief, Defendant Bayer knew, on or about the date of expiration, that the '902 Patent had expired.

71.

Defendant Bayer cannot genuinely believe that the '902 Patent applies even after it expired.

72.

Upon information and belief, Defendant Bayer is a sophisticated company and has many decades of experience applying for, obtaining, and litigating patents. Defendant has committed a substantial amount of its resources to patent procurement and enforcement. Upon information and belief, Defendant has an in-house legal department and attorneys working therein are responsible for Defendant's intellectual property and marketing, labeling, and advertising law. As a sophisticated company, with in-house legal counsel that regularly handles patent matters, including but not limited to patent procurement and patent-related litigation, Defendant is aware of the requirements of 35 U.S.C. § 292.

73.

Defendant Bayer has falsely marked Cipro ® as described with the intent to deceive the public, in violation of 35 U.S.C. § 292(a).

74.

Each false marking on the product(s) identified is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

75.

Defendant Bayer's false marking of products with the '902 Patent after it expired has wrongfully quelled competition with respect to such products, thereby causing harm to Plaintiff, the United States, and the general public.

76.

Defendant Bayer wrongfully and illegally advertised a patent monopoly which it did not possess and, as a result, has benefitted commercially and financially by maintaining false statements of patent rights.

WHEREFORE, Plaintiff demands a trial by jury and requests that the Court enter judgment as follows:

- (a) Enter judgment against Defendant and in favor of Plaintiff for the violations alleged in this Complaint;
- (b) Order Defendant to pay a civil monetary fine of up to five hundred dollars (\$500) per false marking "offense" (or falsely marked article), or an alternative amount as determined by the Court, one-half of which shall be paid to the United States;
- (c) Order Defendant to pay discretionary costs and prejudgment interest;
- (d) Award attorney's fees to plaintiff pursuant to 35 USC § 285;
- (e) Order an accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products; and
- (f) Grant Plaintiff such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

COUNT FOUR: THE '902 PATENT (CIPRODEX ®)

77.

Plaintiff restates and incorporates the foregoing paragraphs as if fully set forth herein.

78.

United States Patent Number 4,844,902 was filed on February 11, 1988, and issued on July 4, 1989. (Please see United States Patent No. 4,844,902, attached hereto as Exhibit 'D').

79.

The '902 Patent expired on February 11, 2008.

80.

Defendant Bayer marketed for sale to the public the product known as Ciprodex ®, marked with the '902 Patent.

81.

Defendant Bayer violated 35 U.S.C. § 292(a) by marking, or causing to be marked, the packaging, labeling, and/or product commonly known as Ciprodex ® with the '902 Patent, and any and all other products marked with the '902 Patent, subsequent to the date the patent expired with the intent to deceive the public. (Please see Ciprodex ® label, attached hereto as Exhibit 'E').

82.

Upon information and belief, Defendant Bayer knew, on or about the date of expiration, that the '902 Patent had expired.

83.

Defendant Bayer cannot genuinely believe that the '902 Patent applies even after it expired.

84.

Upon information and belief, Defendant Bayer is a sophisticated company and has many decades of experience applying for, obtaining, and litigating patents. Defendant has committed a substantial amount of its resources to patent procurement and enforcement. Upon information and belief, Defendant has an in-house legal department and attorneys working therein are responsible for Defendant's intellectual property and marketing, labeling, and advertising law. As a sophisticated company, with in-house legal counsel that regularly handles patent matters, including but not limited to patent procurement and patent-related litigation, Defendant is aware of the requirements of 35 U.S.C. § 292.

85.

Defendant Bayer has falsely marked Ciprodex ® as described with the intent to deceive the public, in violation of 35 U.S.C. § 292(a).

86.

Each false marking on the product(s) identified is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

87.

Defendant Bayer's false marking of products with the '902 Patent after it expired has wrongfully quelled competition with respect to such products, thereby causing harm to Plaintiff, the United States, and the general public.

88.

Defendant Bayer wrongfully and illegally advertised a patent monopoly which it did not possess and, as a result, has benefitted commercially and financially by maintaining false statements of patent rights.

WHEREFORE, Plaintiff demands a trial by jury and requests that the Court enter judgment as follows:

- (a) Enter judgment against Defendant and in favor of Plaintiff for the violations alleged in this Complaint;
- (b) Order Defendant to pay a civil monetary fine of up to five hundred dollars (\$500) per false marking “offense” (or falsely marked article), or an alternative amount as determined by the Court, one-half of which shall be paid to the United States;
- (c) Order Defendant to pay discretionary costs and prejudgment interest;
- (d) Award attorney’s fees to plaintiff pursuant to 35 USC § 285;
- (e) Order an accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products; and
- (f) Grant Plaintiff such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

COUNT FIVE: THE ‘324 PATENT (FLUDARA ®)

89.

Plaintiff restates and incorporates the foregoing paragraphs as if fully set forth herein.

90.

United States Patent Number 4,357,324 was filed on February 24, 1981, and issued on November 2, 1982. (Please see United States Patent No. 4,357,324, attached hereto as Exhibit ‘F’).

91.

The ‘324 Patent expired on February 24, 2003 (following receipt of a two-year extension).

92.

Defendant Bayer marketed for sale to the public the product known as Fludara ®, marked with the '324 Patent.

93.

Defendant Bayer violated 35 U.S.C. § 292(a) by marking, or causing to be marked, the packaging, labeling, and/or product commonly known as Fludara ® with the '324 Patent, and any and all other products marked with the '324 Patent, subsequent to the date the patent expired with the intent to deceive the public. (Please see Fludara Label ® (p.10 of 11), attached hereto as Exhibit 'G').

94.

Upon information and belief, Defendant Bayer knew, on or about the date of expiration, that the '324 Patent had expired.

95.

Defendant Bayer cannot genuinely believe that the '324 Patent applies even after it expired.

96.

Upon information and belief, Defendant Bayer is a sophisticated company and has many decades of experience applying for, obtaining, and litigating patents. Defendant has committed a substantial amount of its resources to patent procurement and enforcement. Upon information and belief, Defendant has an in-house legal department and attorneys working therein are responsible for Defendant's intellectual property and marketing, labeling, and advertising law. As a sophisticated company, with in-house legal counsel that regularly handles patent matters,

including but not limited to patent procurement and patent-related litigation, Defendant is aware of the requirements of 35 U.S.C. § 292.

97.

Defendant Bayer has falsely marked Fludara ® as described with the intent to deceive the public, in violation of 35 U.S.C. § 292(a).

98.

Each false marking on the product(s) identified is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

99.

Defendant Bayer's false marking of products with the '324 Patent after it expired has wrongfully quelled competition with respect to such products, thereby causing harm to Plaintiff, the United States, and the general public.

100.

Defendant Bayer wrongfully and illegally advertised a patent monopoly which it did not possess and, as a result, has benefitted commercially and financially by maintaining false statements of patent rights.

WHEREFORE, Plaintiff demands a trial by jury and requests that the Court enter judgment as follows:

- (a) Enter judgment against Defendant and in favor of Plaintiff for the violations alleged in this Complaint;
- (b) Order Defendant to pay a civil monetary fine of up to five hundred dollars (\$500) per false marking "offense" (or falsely marked article), or an alternative amount as determined by the Court, one-half of which shall be paid to the United States;

- (c) Order Defendant to pay discretionary costs and prejudgment interest;
- (d) Award attorney's fees to plaintiff pursuant to 35 USC § 285;
- (e) Order an accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products; and
- (f) Grant Plaintiff such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

COUNT SIX: THE '576 PATENT (LEGEND ®)

101.

Plaintiff restates and incorporates the foregoing paragraphs as if fully set forth herein.

102.

United States Patent Number 4,808,576 was filed on April 28, 1986, and issued on February 29, 1989. (Please see United States Patent No. 4,808,576, attached hereto as Exhibit 'H').

103.

The '576 Patent expired on April 28, 2006.

104.

Defendant Bayer marketed for sale to the public the product known as Legend®, marked with the '576 Patent.

105.

Defendant Bayer violated 35 U.S.C. § 292(a) by marking, or causing to be marked, the packaging, labeling, and/or product commonly known as Legend ® with the '576 Patent, and any and all other products marked with the '576 Patent, subsequent to the date the patent expired with the intent to deceive the public. (Please see Legend® Label, attached hereto as Exhibit 'I').

106.

Upon information and belief, Defendant Bayer knew, on or about the date of expiration, that the '576 Patent had expired.

107.

Defendant Bayer cannot genuinely believe that the '576 Patent applies even after it expired.

108.

Upon information and belief, Defendant Bayer is a sophisticated company and has many decades of experience applying for, obtaining, and litigating patents. Defendant has committed a substantial amount of its resources to patent procurement and enforcement. Upon information and belief, Defendant has an in-house legal department and attorneys working therein are responsible for Defendant's intellectual property and marketing, labeling, and advertising law. As a sophisticated company, with in-house legal counsel that regularly handles patent matters, including but not limited to patent procurement and patent-related litigation, Defendant is aware of the requirements of 35 U.S.C. § 292.

109.

Defendant Bayer has falsely marked Legend ® as described with the intent to deceive the public, in violation of 35 U.S.C. § 292(a).

110.

Each false marking on the product(s) identified is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

111.

Defendant Bayer's false marking of products with the '576 Patent after it expired has wrongfully quelled competition with respect to such products, thereby causing harm to Plaintiff, the United States, and the general public.

112.

Defendant Bayer wrongfully and illegally advertised a patent monopoly which it did not possess and, as a result, has benefitted commercially and financially by maintaining false statements of patent rights.

WHEREFORE, Plaintiff demands a trial by jury and requests that the Court enter judgment as follows:

- (a) Enter judgment against Defendant and in favor of Plaintiff for the violations alleged in this Complaint;
- (b) Order Defendant to pay a civil monetary fine of up to five hundred dollars (\$500) per false marking "offense" (or falsely marked article), or an alternative amount as determined by the Court, one-half of which shall be paid to the United States;
- (c) Order Defendant to pay discretionary costs and prejudgment interest;
- (d) Award attorney's fees to plaintiff pursuant to 35 USC § 285;
- (e) Order an accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products; and
- (f) Grant Plaintiff such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

COUNT SEVEN: THE '787 PATENT (PROLEUKIN®)

113.

Plaintiff restates and incorporates the foregoing paragraphs as if fully set forth herein.

114.

United States Patent Number 4,530,787 was filed on October 17, 1984, and issued on July 23, 1985. (Please see United States Patent No. 4,530,787, attached hereto as Exhibit 'J').

115.

The '787 Patent expired on March 17, 2004.

116.

Defendant Bayer marketed for sale to the public the product known as Proleukin ®, marked with the '787 Patent.

117.

Defendant Bayer violated 35 U.S.C. § 292(a) by marking, or causing to be marked, the packaging, labeling, and/or product commonly known as Proleukin ® with the '787 Patent, and any and all other products marked with the '787 Patent, subsequent to the date the patent expired with the intent to deceive the public. (Please see Proleukin Label, attached hereto as Exhibit 'K').

118.

Upon information and belief, Defendant Bayer knew, on or about the date of expiration, that the '787 Patent had expired.

119.

Defendant Bayer cannot genuinely believe that the '787 Patent applies even after it expired.

120.

Upon information and belief, Defendant Bayer is a sophisticated company and has many decades of experience applying for, obtaining, and litigating patents. Defendant has committed a substantial amount of its resources to patent procurement and enforcement. Upon information and belief, Defendant has an in-house legal department and attorneys working therein are responsible for Defendant's intellectual property and marketing, labeling, and advertising law. As a sophisticated company, with in-house legal counsel that regularly handles patent matters, including but not limited to patent procurement and patent-related litigation, Defendant is aware of the requirements of 35 U.S.C. § 292.

121.

Defendant Bayer has falsely marked Proleukin ® as described with the intent to deceive the public, in violation of 35 U.S.C. § 292(a).

122.

Each false marking on the product(s) identified is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

123.

Defendant Bayer's false marking of products with the '787 Patent after it expired has wrongfully quelled competition with respect to such products, thereby causing harm to Plaintiff, the United States, and the general public.

124.

Defendant Bayer wrongfully and illegally advertised a patent monopoly which it did not possess and, as a result, has benefitted commercially and financially by maintaining false statements of patent rights.

WHEREFORE, Plaintiff demands a trial by jury and requests that the Court enter judgment as follows:

- (a) Enter judgment against Defendant and in favor of Plaintiff for the violations alleged in this Complaint;
- (b) Order Defendant to pay a civil monetary fine of up to five hundred dollars (\$500) per false marking “offense” (or falsely marked article), or an alternative amount as determined by the Court, one-half of which shall be paid to the United States;
- (c) Order Defendant to pay discretionary costs and prejudgment interest;
- (d) Award attorney’s fees to plaintiff pursuant to 35 USC § 285;
- (e) Order an accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products; and
- (f) Grant Plaintiff such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

COUNT EIGHT: THE ‘790 PATENT (PROLEUKIN ®)

125.

Plaintiff restates and incorporates the foregoing paragraphs as if fully set forth herein.

126.

United States Patent Number 4,569,790 was filed on March 28, 1984, and issued on February 11, 1986. (Please see United States Patent No. 4,569,790, attached hereto as Exhibit ‘L’).

127.

The ‘787 Patent expired on March 28, 2004.

128.

Defendant Bayer marketed for sale to the public the product known as Proleukin ®, marked with the '790 Patent.

129.

Defendant Bayer violated 35 U.S.C. § 292(a) by marking, or causing to be marked, the packaging, labeling, and/or product commonly known as Proleukin ® with the '790 Patent, and any and all other products marked with the '790 Patent, subsequent to the date the patent expired with the intent to deceive the public. (Please see Proleukin Label, attached hereto as Exhibit 'K').

130.

Upon information and belief, Defendant Bayer knew, on or about the date of expiration, that the '790 Patent had expired.

131.

Defendant Bayer cannot genuinely believe that the '790 Patent applies even after it expired.

132.

Upon information and belief, Defendant Bayer is a sophisticated company and has many decades of experience applying for, obtaining, and litigating patents. Defendant has committed a substantial amount of its resources to patent procurement and enforcement. Upon information and belief, Defendant has an in-house legal department and attorneys working therein are responsible for Defendant's intellectual property and marketing, labeling, and advertising law. As a sophisticated company, with in-house legal counsel that regularly handles patent matters,

including but not limited to patent procurement and patent-related litigation, Defendant is aware of the requirements of 35 U.S.C. § 292.

133.

Defendant Bayer has falsely marked Proleukin ® as described with the intent to deceive the public, in violation of 35 U.S.C. § 292(a).

134.

Each false marking on the product(s) identified is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

135.

Defendant Bayer's false marking of products with the '790 Patent after it expired has wrongfully quelled competition with respect to such products, thereby causing harm to Plaintiff, the United States, and the general public.

136.

Defendant Bayer wrongfully and illegally advertised a patent monopoly which it did not possess and, as a result, has benefitted commercially and financially by maintaining false statements of patent rights.

WHEREFORE, Plaintiff demands a trial by jury and requests that the Court enter judgment as follows:

- (a) Enter judgment against Defendant and in favor of Plaintiff for the violations alleged in this Complaint;
- (b) Order Defendant to pay a civil monetary fine of up to five hundred dollars (\$500) per false marking "offense" (or falsely marked article), or an alternative amount as determined by the Court, one-half of which shall be paid to the United States;

- (c) Order Defendant to pay discretionary costs and prejudgment interest;
- (d) Award attorney's fees to plaintiff pursuant to 35 USC § 285;
- (e) Order an accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products; and
- (f) Grant Plaintiff such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

COUNT NINE: THE '377 PATENT (PROLEUKIN ®)

137.

Plaintiff restates and incorporates the foregoing paragraphs as if fully set forth herein.

138.

United States Patent Number 4,604,377 was filed on March 21, 1985, and issued on August 5, 1987. (Please see United States Patent No. 4,604,377, attached hereto as Exhibit 'M').

139.

The '377 Patent expired on March 21, 2004.

140.

Defendant Bayer marketed for sale to the public the product known as Proleukin ®, marked with the '377 Patent.

141.

Defendant Bayer violated 35 U.S.C. § 292(a) by marking, or causing to be marked, the packaging, labeling, and/or product commonly known as Proleukin ® with the '377 Patent, and any and all other products marked with the '377 Patent, subsequent to the date the patent expired with the intent to deceive the public. (Please see Proleukin Label, attached hereto as Exhibit 'K').

142.

Upon information and belief, Defendant Bayer knew, on or about the date of expiration, that the '377 Patent had expired.

143.

Defendant Bayer cannot genuinely believe that the '377 Patent applies even after it expired.

144.

Upon information and belief, Defendant Bayer is a sophisticated company and has many decades of experience applying for, obtaining, and litigating patents. Defendant has committed a substantial amount of its resources to patent procurement and enforcement. Upon information and belief, Defendant has an in-house legal department and attorneys working therein are responsible for Defendant's intellectual property and marketing, labeling, and advertising law. As a sophisticated company, with in-house legal counsel that regularly handles patent matters, including but not limited to patent procurement and patent-related litigation, Defendant is aware of the requirements of 35 U.S.C. § 292.

145.

Defendant Bayer has falsely marked Proleukin ® as described with the intent to deceive the public, in violation of 35 U.S.C. § 292(a).

146.

Each false marking on the product(s) identified is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

147.

Defendant Bayer's false marking of products with the '377 Patent after it expired has wrongfully quelled competition with respect to such products, thereby causing harm to Plaintiff, the United States, and the general public.

148.

Defendant Bayer wrongfully and illegally advertised a patent monopoly which it did not possess and, as a result, has benefitted commercially and financially by maintaining false statements of patent rights.

WHEREFORE, Plaintiff demands a trial by jury and requests that the Court enter judgment as follows:

- (a) Enter judgment against Defendant and in favor of Plaintiff for the violations alleged in this Complaint;
- (b) Order Defendant to pay a civil monetary fine of up to five hundred dollars (\$500) per false marking "offense" (or falsely marked article), or an alternative amount as determined by the Court, one-half of which shall be paid to the United States;
- (c) Order Defendant to pay discretionary costs and prejudgment interest;
- (d) Award attorney's fees to plaintiff pursuant to 35 USC § 285;
- (e) Order an accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products; and
- (f) Grant Plaintiff such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

COUNT TEN: THE '234 PATENT (PROLEUKIN ®)

149.

Plaintiff restates and incorporates the foregoing paragraphs as if fully set forth herein.

150.

United States Patent Number 4,748,234 was filed on March 25, 1986, and issued on May 31, 1988. (Please see United States Patent No. 4,748,234, attached hereto as Exhibit 'N').

151.

The '234 Patent expired on March 25, 2006.

152.

Defendant Bayer marketed for sale to the public the product known as Proleukin ®, marked with the '234 Patent.

153.

Defendant Bayer violated 35 U.S.C. § 292(a) by marking, or causing to be marked, the packaging, labeling, and/or product commonly known as Proleukin ® with the '234 Patent, and any and all other products marked with the '234 Patent, subsequent to the date the patent expired with the intent to deceive the public. (Please see Proleukin Label, attached hereto as Exhibit 'K').

154.

Upon information and belief, Defendant Bayer knew, on or about the date of expiration, that the '234 Patent had expired.

155.

Defendant Bayer cannot genuinely believe that the '234 Patent applies even after it expired.

156.

Upon information and belief, Defendant Bayer is a sophisticated company and has many decades of experience applying for, obtaining, and litigating patents. Defendant has committed a substantial amount of its resources to patent procurement and enforcement. Upon information and belief, Defendant has an in-house legal department and attorneys working therein are responsible for Defendant's intellectual property and marketing, labeling, and advertising law. As a sophisticated company, with in-house legal counsel that regularly handles patent matters, including but not limited to patent procurement and patent-related litigation, Defendant is aware of the requirements of 35 U.S.C. § 292.

157.

Defendant Bayer has falsely marked Proleukin ® as described with the intent to deceive the public, in violation of 35 U.S.C. § 292(a).

158.

Each false marking on the product(s) identified is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

159.

Defendant Bayer's false marking of products with the '234 Patent after it expired has wrongfully quelled competition with respect to such products, thereby causing harm to Plaintiff, the United States, and the general public.

160.

Defendant Bayer wrongfully and illegally advertised a patent monopoly which it did not possess and, as a result, has benefitted commercially and financially by maintaining false statements of patent rights.

WHEREFORE, Plaintiff demands a trial by jury and requests that the Court enter judgment as follows:

- (a) Enter judgment against Defendant and in favor of Plaintiff for the violations alleged in this Complaint;
- (b) Order Defendant to pay a civil monetary fine of up to five hundred dollars (\$500) per false marking “offense” (or falsely marked article), or an alternative amount as determined by the Court, one-half of which shall be paid to the United States;
- (c) Order Defendant to pay discretionary costs and prejudgment interest;
- (d) Award attorney’s fees to plaintiff pursuant to 35 USC § 285;
- (e) Order an accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products; and
- (f) Grant Plaintiff such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

COUNT ELEVEN: THE ‘798 PATENT (PROLEUKIN ®)

161.

Plaintiff restates and incorporates the foregoing paragraphs as if fully set forth herein.

162.

United States Patent Number 4,572,798 was filed on December 6, 1984, and issued on February 25, 1986. (Please see United States Patent Number 4, 572,798, attached hereto as Exhibit ‘O’).

163.

The ‘798 Patent expired on December 6, 2004.

164.

Defendant Bayer marketed for sale to the public the product known as Proleukin ®, marked with the '798 Patent.

165.

Defendant Bayer violated 35 U.S.C. § 292(a) by marking, or causing to be marked, the packaging, labeling, and/or product commonly known as Proleukin ® with the '798 Patent, and any and all other products marked with the '798 Patent, subsequent to the date the patent expired with the intent to deceive the public. (Please see Proleukin Label, attached hereto as Exhibit 'K').

166.

Upon information and belief, Defendant Bayer knew, on or about the date of expiration, that the '798 Patent had expired.

167.

Defendant Bayer cannot genuinely believe that the '798 Patent applies even after it expired.

168.

Upon information and belief, Defendant Bayer is a sophisticated company and has many decades of experience applying for, obtaining, and litigating patents. Defendant has committed a substantial amount of its resources to patent procurement and enforcement. Upon information and belief, Defendant has an in-house legal department and attorneys working therein are responsible for Defendant's intellectual property and marketing, labeling, and advertising law. As a sophisticated company, with in-house legal counsel that regularly handles patent matters,

including but not limited to patent procurement and patent-related litigation, Defendant is aware of the requirements of 35 U.S.C. § 292.

169.

Defendant Bayer has falsely marked Proleukin ® as described with the intent to deceive the public, in violation of 35 U.S.C. § 292(a).

170.

Each false marking on the product(s) identified is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

171.

Defendant Bayer's false marking of products with the '798 Patent after it expired has wrongfully quelled competition with respect to such products, thereby causing harm to Plaintiff, the United States, and the general public.

172.

Defendant Bayer wrongfully and illegally advertised a patent monopoly which it did not possess and, as a result, has benefitted commercially and financially by maintaining false statements of patent rights.

WHEREFORE, Plaintiff demands a trial by jury and requests that the Court enter judgment as follows:

- (a) Enter judgment against Defendant and in favor of Plaintiff for the violations alleged in this Complaint;
- (b) Order Defendant to pay a civil monetary fine of up to five hundred dollars (\$500) per false marking "offense" (or falsely marked article), or an alternative amount as determined by the Court, one-half of which shall be paid to the United States;

- (c) Order Defendant to pay discretionary costs and prejudgment interest;
- (d) Award attorney's fees to plaintiff pursuant to 35 USC § 285;
- (e) Order an accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products; and
- (f) Grant Plaintiff such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

COUNT TWELVE: THE '332 PATENT (PROLEUKIN ®)

173.

Plaintiff restates and incorporates the foregoing paragraphs as if fully set forth herein.

174.

United States Patent Number 4,853,332 was filed on December 21, 1984, and issued on August 1, 1989. (Please see United States Patent Number 4,853,332, attached hereto as Exhibit 'P').

175.

The '332 Patent expired on August 1, 2006.

176.

Defendant Bayer marketed for sale to the public the product known as Proleukin ®, marked with the '332 Patent.

177.

Defendant Bayer violated 35 U.S.C. § 292(a) by marking, or causing to be marked, the packaging, labeling, and/or product commonly known as Proleukin ® with the '332 Patent, and any and all other products marked with the '332 Patent, subsequent to the date the patent expired

with the intent to deceive the public. (Please see Proleukin Label, attached hereto as Exhibit 'K').

178.

Upon information and belief, Defendant Bayer knew, on or about the date of expiration, that the '332 Patent had expired.

179.

Defendant Bayer cannot genuinely believe that the '332 Patent applies even after it expired.

180.

Upon information and belief, Defendant Bayer is a sophisticated company and has many decades of experience applying for, obtaining, and litigating patents. Defendant has committed a substantial amount of its resources to patent procurement and enforcement. Upon information and belief, Defendant has an in-house legal department and attorneys working therein are responsible for Defendant's intellectual property and marketing, labeling, and advertising law. As a sophisticated company, with in-house legal counsel that regularly handles patent matters, including but not limited to patent procurement and patent-related litigation, Defendant is aware of the requirements of 35 U.S.C. § 292.

181.

Defendant Bayer has falsely marked Proleukin ® as described with the intent to deceive the public, in violation of 35 U.S.C. § 292(a).

182.

Each false marking on the product(s) identified is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

183.

Defendant Bayer's false marking of products with the '332 Patent after it expired has wrongfully quelled competition with respect to such products, thereby causing harm to Plaintiff, the United States, and the general public.

184.

Defendant Bayer wrongfully and illegally advertised a patent monopoly which it did not possess and, as a result, has benefitted commercially and financially by maintaining false statements of patent rights.

WHEREFORE, Plaintiff demands a trial by jury and requests that the Court enter judgment as follows:

- (a) Enter judgment against Defendant and in favor of Plaintiff for the violations alleged in this Complaint;
- (b) Order Defendant to pay a civil monetary fine of up to five hundred dollars (\$500) per false marking "offense" (or falsely marked article), or an alternative amount as determined by the Court, one-half of which shall be paid to the United States;
- (c) Order Defendant to pay discretionary costs and prejudgment interest;
- (d) Award attorney's fees to plaintiff pursuant to 35 USC § 285;
- (e) Order an accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products; and
- (f) Grant Plaintiff such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

COUNT THIRTEEN: THE '314 PATENT (PROLEUKIN®)

185.

Plaintiff restates and incorporates the foregoing paragraphs as if fully set forth herein.

186.

United States Patent Number 4,959,314 was filed on February 7, 1985, and issued on September 25, 1990. (Please see United States Patent No. 4,959,314, attached hereto as Exhibit 'Q').

187.

The '314 Patent expired on September 25, 2007.

188.

Defendant Bayer marketed for sale to the public the product known as Proleukin ®, marked with the '314 Patent.

189.

Defendant Bayer violated 35 U.S.C. § 292(a) by marking, or causing to be marked, the packaging, labeling, and/or product commonly known as Proleukin ® with the '314 Patent, and any and all other products marked with the '314 Patent, subsequent to the date the patent expired with the intent to deceive the public. (Please see Proleukin Label, attached hereto as Exhibit 'K').

190.

Upon information and belief, Defendant Bayer knew, on or about the date of expiration, that the '314 Patent had expired.

191.

Defendant Bayer cannot genuinely believe that the '314 Patent applies even after it expired.

192.

Upon information and belief, Defendant Bayer is a sophisticated company and has many decades of experience applying for, obtaining, and litigating patents. Defendant has committed a substantial amount of its resources to patent procurement and enforcement. Upon information and belief, Defendant has an in-house legal department and attorneys working therein are responsible for Defendant's intellectual property and marketing, labeling, and advertising law. As a sophisticated company, with in-house legal counsel that regularly handles patent matters, including but not limited to patent procurement and patent-related litigation, Defendant is aware of the requirements of 35 U.S.C. § 292.

193.

Defendant Bayer has falsely marked Proleukin ® as described with the intent to deceive the public, in violation of 35 U.S.C. § 292(a).

194.

Each false marking on the product(s) identified is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

195.

Defendant Bayer's false marking of products with the '314 Patent after it expired has wrongfully quelled competition with respect to such products, thereby causing harm to Plaintiff, the United States, and the general public.

196.

Defendant Bayer wrongfully and illegally advertised a patent monopoly which it did not possess and, as a result, has benefitted commercially and financially by maintaining false statements of patent rights.

WHEREFORE, Plaintiff demands a trial by jury and requests that the Court enter judgment as follows:

- (a) Enter judgment against Defendant and in favor of Plaintiff for the violations alleged in this Complaint;
- (b) Order Defendant to pay a civil monetary fine of up to five hundred dollars (\$500) per false marking “offense” (or falsely marked article), or an alternative amount as determined by the Court, one-half of which shall be paid to the United States;
- (c) Order Defendant to pay discretionary costs and prejudgment interest;
- (d) Award attorney’s fees to plaintiff pursuant to 35 USC § 285;
- (e) Order an accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products; and
- (f) Grant Plaintiff such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted this 13th day of April, 2010.

/s/ W. Daniel Miles, III
W. DANIEL “DEE” MILES, III *

/s/ Roman A. Shaul
ROMAN A. SHAUL (TN BPR # 024265)

/s/ Archie Grubb II
ARCHIE I. GRUBB, II *
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* Application for admission pending on behalf of Dee Miles and Archie Grubb.

/s/ Kirk Caraway
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