IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

COLLEGE PRODUCTS, INC.	§	
	§	
Plaintiff,	§	
	§	
vs.	§	CIVIL ACTION NO. 5:23-cv-4002-KEM
	§	
INTIRION CORPORATION,	§	JURY TRIAL DEMANDED
	§	
Defendant.	§	

AMENDED COMPLAINT

COMES NOW Plaintiff College Products, Inc. ("College Products"), by their undersigned attorneys, Blank Rome LLP and Crary Huff, P.C., who state and allege as follows:

NATURE OF THE ACTION

1. This case is a civil action for declaratory judgment of noninfringement and invalidity arising under 28 U.S.C. §§2201 and 2202 and the Patent Laws of the United States, Title 35 of the United States Code.

2. This case is also a civil action for unfair competition under the Lanham Act, 15 U.S.C. §1125, and common law unfair competition, tortious interference with prospective business relations, tortious interference with contractual relations, and defamation.

PARTIES

3. College Products is an Iowa corporation with its principal place of business at 1400 W. 1st Street, Sioux City, IA 51103.

4. Upon information and belief, Intirion, dba MicroFridge, is a Delaware corporation with its principal place of business at 2 Annette Road, Suite 3, Foxboro, MA, 02035.

JURISDICTION AND VENUE

5. This action arises under the Declaratory Judgment Act, 28 U.S.C. §2201 *et. seq*. and under the Patent Laws of the United States, 35 U.S.C. §100 *et. seq.*

6. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§1331, 1338, 2201, and 2202 because this Court has exclusive jurisdiction over declaratory judgment claims arising under the Patent Laws of the United States pursuant to 28 U.S.C. §§1331, 1338, 2201, and 2202.

7. This Court has subject matter jurisdiction over College Products' federal claims under the Lanham Act under 15 U.S.C. §§1051-1141, and particularly on the basis of 15 U.S.C. §1125, as well as pursuant to 28 U.S.C. §§1331, 1338 and 1367.

8. The Court has subject matter jurisdiction over College Products' common law claims pursuant to 28 U.S.C. §1338 because they present a substantial issue involving patent law. Alternatively, there is jurisdiction over those claims pursuant to the supplemental jurisdiction statute, 28 U.S.C. §1367, and it is proper for the Court to exercise that supplemental jurisdiction pursuant to the factors listed in 28 U.S.C. §1367(c). Additionally, this Court has supplemental jurisdiction over College Products' common law claims pursuant to 28 U.S.C. §1367 because those claims are substantially related to College Products' federal claims under the Lanham Act.

9. Jurisdiction is also proper under 28 U.S.C. §1332 because College Products and Intirion are citizens of different states, and the value of the controversy exceeds $75,000.

10. This Court has personal jurisdiction over Intirion because Intirion filed a lawsuit pending in this Court. *See Intirion Corp. v. College Products, Inc.*, 5:23-cv-4023-KEM (N.D. Iowa).

11. The Court also has personal jurisdiction over Intirion because Intirion's conduct in this District forms the basis for College Products' claims. Specifically, on May 6, 2022, Intirion filed a patent infringement lawsuit against College Products in the improper venue of the Western District of Texas. After filing the lawsuit, Intirion did not immediately serve a summons and the Intirion Complaint on College Products. Instead, on or around May 20, 2022, it sent a letter to College Products at its headquarters located in this District in Sioux City, Iowa.[1] In the letter, Intirion accused College Products of infringing the Asserted Patents and provided College Products a courtesy copy of its already filed Intirion Complaint. Intirion made clear it would formally serve the complaint on College Products and begin the litigation process if College Products refused to enter into a patent license agreement and compensate Intirion for alleged past infringement. Ex. 2 at 1–2. Intirion gave College Products 14 days to respond to its letter before Intirion would move forward with its litigation. *Id.* at 2. Further, upon information and belief, Intirion has contacted College Products' customers and/or potential customers, made meritless allegations of infringement and harmed College Products' business and its reputation.

12. The Court also has personal jurisdiction over Intirion because, on information and belief, Intirion has established minimum contacts within this District such that the exercise of jurisdiction over Intirion would not offend traditional notions of fair play and substantial justice. Specifically, upon information and belief, Intirion is registered with the Iowa Secretary of State to transact business in the State of Iowa, has made contracts with residents of Iowa, and has done and continues to do business in the State of Iowa, at least with (1) Collegiate Concepts, Inc. ("Collegiate Concepts"), located in the Southern District of Iowa in Huxley, Iowa; (2) Iowa State University, located in the Southern District of Iowa in Ames, Iowa; (3) Loras College, located in

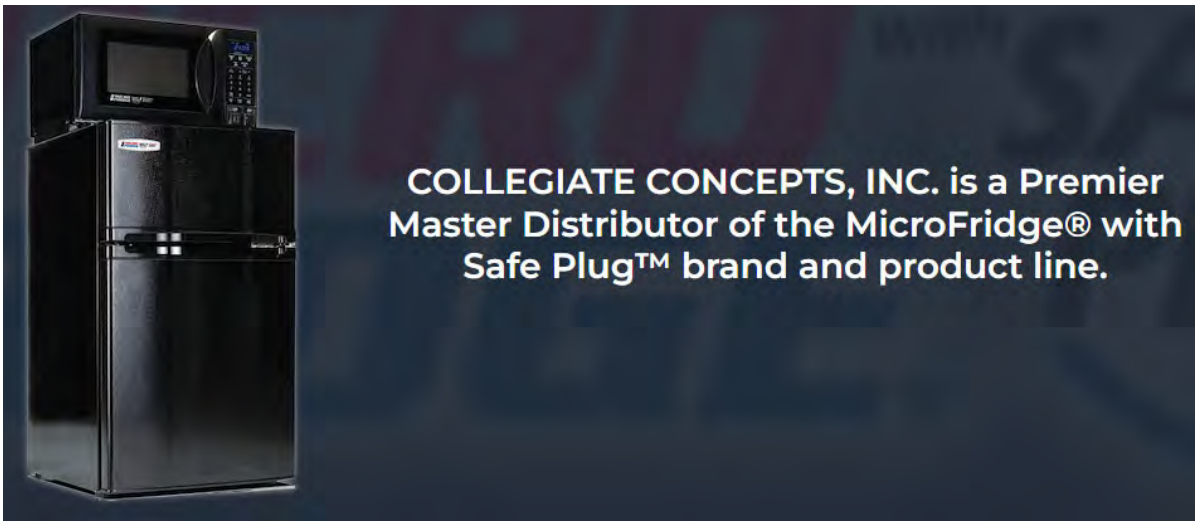
[1] A true and correct copy of that letter is attached as Exhibit 2.

this District in Dubuque, Iowa; (4) Northwestern College located in this District in Orange City, Iowa; (5) Upper Iowa University located in this District in Fayette, Iowa; and (6) hotels located in this District and the Southern District of Iowa. Further, Intirion purposefully directs into the State of Iowa, including in this District, commerce, goods and/or services, including its MicroFridge Products, either directly and/or through a distributor. Additionally, pursuant to Iowa Code § 617.3, Iowa's long-arm statute, such jurisdiction over Intirion and College Product's state claims is proper and comports with due process under the United States Constitution.

13. As one example of Intirion's contacts with this forum, upon information and belief, Intirion, dba MicroFridge, designs, manufactures, offers to sell, and sells small-spaced appliances under the brand name MicroFridge (the "MicroFridge Products"). Intirion purportedly owns trademark registrations for MicroFridge.[2] Upon information and belief, Intirion shipped several MicroFridge Products to Iowa State University in 2022.

14. As another example of Intirion's contacts with this forum, upon information and belief, Collegiate Concepts is an Iowa corporation located at 101 Campus Drive, Huxley, Iowa 50124. As shown in the photo below, upon information and belief, Collegiate Concepts is Intirion's "Premier Master Distributor" of Intirion's MicroFridge Products, including in Iowa. *See* https://www.collegiateconcepts.net/ (reproduced in part below). Upon information and belief, Intirion has a distributor agreement with Collegiate Concepts.

[2] *See, e.g.*, a true and correct copy of a Certificate of Registration downloaded from the United States Patent and Trademark Office for one of Intirion's MicroFridge trademarks is attached as Exhibit 3.



15. Upon information and belief, Collegiate Concepts offers to sell, sells, and/or leases MicroFridge Products to students at Iowa State University on behalf of Intirion. *See* https://www.collegiateconcepts.net/schools/iowa-state-university/. It has purportedly "leased over 10,000 MicroFridges to Iowa State University students over the last 15 years." *Id.* Exhibit 4 is a webpage printout showing the availability of the MicroFridge Products for lease to Iowa State University students.

16. As yet another example of contacts with this forum, upon information and belief, Exhibit 5 is a webpage printout showing the availability of the MircoFridge Products for lease to students of Loras College in Dubuque, IA. Ex. 5 at 1 (Loras College student talking about his MicroFridge).

17. As another example of contacts with this forum, upon information and belief, Intirion offers to sell, sells, and/or leases to students at Northwestern College in this District in Orange City, Iowa. Upon information and belief, Exhibit 6 is Northwestern College's 2020-2021 Student Handbook and it states that MicroFridge Products are allowed in college housing. Ex. 6 at 32.

18. As another example of contacts with this forum, upon information and belief, Intirion offers to sell, sells, and/or leases to students at Upper Iowa University in this District in Fayette, Iowa. Upon information and belief, Exhibit 7 is a webpage printout showing the availability of the MircoFridge Products for lease to Upper Iowa University students. Ex. 7 at 1.

19. As yet another example of contacts with this forum, upon information and belief, Intirion offers to sell, sells, and/or leases MicroFridge Products to hotel chains, including Choice Hotels, Wyndham Hotel Group, Best Western Hotels & Resorts, IHG Hotels & Resorts, Marriott, Hyatt House, Hyatt Place, Motel 6, and Hilton Garden Inn. Upon information and belief, Exhibit 8 is a product guide for MicroFridge; in the guide, MicroFridge (i.e., Intirion's doing business name) is identified as a vendor of MicroFridge products for these hotel chains. *See* Ex. 8 at 2. Upon information and belief, those hotel chains have hotels located in this District and the Southern District of Southern District.

20. Venue for this action is proper in this District pursuant to 28 U.S.C. §1391 because Intirion resides in this District for the purposes of this statute. Under 28 U.S.C. §1391(b)(1), venue is proper in any judicial district where a defendant resides. An entity with the capacity to sue and be sued, such as Intirion, is deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question under 28 U.S.C. §1391(c). As discussed above in ¶¶10-19 (incorporated herein by reference), Intirion is subject to personal jurisdiction with respect to this action in the Northern District of Iowa, and thus, for purposes of this action, Intirion resides in the Northern District of Iowa and venue is proper under 28 U.S.C. §1391.

21. Venue for this action is also proper in this District pursuant to 28 U.S.C. §1391 because College Products, the plaintiff, resides in this District. As discussed above in ¶3

(incorporated herein by reference), College Products' principal place of business is located in this District.

22. Venue for this action is also proper in this District pursuant to 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to College Products' claim occurred in this District. *See supra* at ¶11 (incorporated herein by reference).

23. Venue for this action is also proper in this District pursuant to 28 U.S.C. §1391 because a substantial part of property that is the subject of this action is situated in this District. Intirion has accused College Products of direct and indirect infringement of the Asserted Patents either literally or under the doctrine of equivalents, citing College Products' sale and customer use of the MicroChill Products. By this action, College Products seeks a declaratory judgment and relief that it has not and does not and its MicroChill Products have not and do not infringe any claim of the Asserted Patents, and that the Asserted Patents are invalid and thus cannot be asserted against College Products or its MicroChill Products. College Products also seeks judgment that Intirion engaged in unfair competitive practices, tortiously interfered with College Products prospective business relations, tortiously interfered with College Products contractual relations and made defamatory statements about College Products and their MicroChill Products. The MicroChill Products are assembled and stored in this District at College Products' headquarters located in this District.

24. Venue in this District is also proper under 28 U.S.C. §1391(d) because (i) Intirion's contacts with this District are sufficient to subject it to personal jurisdiction in this District if it were a separate state (*see supra* at ¶¶10-14, 16-19 (incorporated herein by reference)) and/or (ii) Intirion's contacts within this District are the most significant compared to the other district in the State of Iowa *see supra* at ¶¶10-19 (incorporated herein by reference)).

FACTUAL BACKGROUND

25. College Products is a national provider of eco-friendly rental, lease, and sale products to colleges and universities in twenty-seven states, including most of the Midwest, California, Texas, and Massachusetts. Its products help students turn their rooms into homes. Some of College Products' most popular products are its innovative MicroChill Products.

26. As shown in the photos below, College Products' MicroChill Products are compact combination appliances that may include a refrigerator/freezer and a microwave. Some of the microwaves have USB charging ports built into them that allow certain electronic devices to be charged quickly without the need for a wall plug.

MicroChill® Combo
*Cycles Power from Fridge when Microwave is in use to conserve energy and amp consumption
*Power is restored to fridge even if microwave door is left open

Dual USB Charging Station
Conveniently located on the front control panel for easy access and quick charging.

27. MicroChill Products have several advantages, including reducing energy consumption and requiring fewer outlets. For example, MicroChill Products are Energy Star rated and UL Certified as a combination appliance. College Products has worked hard to increase the efficiency of its refrigerator/freezer appliance from 270 kWh to an industry leading 199 kWh. College Products was the first company to introduce R600A refrigerant (natural refrigerant with no ozone depleting properties) to the college & university market and lower the kWh to 199. This provides an annual savings of $8.52 per year. If 800 units were rented, for example, this provides annual savings of several thousands of dollars in electricity consumption. The MicroChill Products have an internal switching mechanism that regulates the power so only one of the appliances can draw energy at a time.

28. The MicroChill Products also have a power outlet on the back of the microwave where the fridge is plugged in, making the microwave the only part of the unit that has to be plugged into the wall. As shown in the photo below, the products further include a UL certified Tamper Resistant Strap (TRS™) covering that prevents students from disconnecting the fridge from the microwave and plugging both into the wall, negating the power saving functions of the combination appliance. College products was the first company to advance the safety of the single plug to wall design with the TRS™ covering.

INTIRION'S FRIVOLOUS FILING OF A PATENT SUIT IN WACO

29. Intirion filed a complaint for patent infringement ("Intirion Complaint")[3] in the Western District of Texas Waco Division on May 6, 2022 ("The Texas Action"). Intirion alleged that College Products has infringed the Patents Nos. 9,657,974 ("the '974 Patent"), 9,791,206 ("the '206 Patent"), 10,495,374 ("the '374 Patent"), and 11,274,876 ("the '876 Patent") (collectively, the "Asserted Patents") by making, using, selling, offering for sale, leasing, offering for and/or importing certain small space appliances, such as microwaves, mini refrigerators, and/or microwave and refrigerator combinations, under its trademarks MicroChill and/or MicroChill 3.2 (the "MicroChill Products"). Intirion Complaint, ¶¶18, 23.

30. Intirion also alleges that it owns by assignment all right, title, and interest in the Asserted Patents, including the right to use and enforce the Asserted Patents. *Id.*, ¶8.

31. The '974 Patent states it issued on May 23, 2018, from an application filed on April 25, 2015. The '974 Patent identifies Phillip Emma as the inventor and is titled "Multiple Linked Appliance with Auxiliary Outlet." A copy of the '974 Patent is attached as Exhibit 9.

[3] A true and correct copy of the Intirion Complaint is attached as Exhibit 1. The complaint's exhibits have been omitted.

The ’974 Patent issued with 22 claims, of which claims 1, 12, and 17 are independent claims and the remaining claims are dependent.

32. The ’206 Patent states it issued on October 17, 2017, from an application filed on April 22, 2016. The ’206 Patent identifies Gregory Allan Thomas Hall and Phillip Emma as inventors and is titled “Multiple Linked Appliance with Auxiliary Outlet.” A copy of the ’206 Patent is attached as Exhibit 10. The ’206 Patent issued with 12 claims, of which claims 1, 9 and 11 are independent claims and the remaining claims are dependent.

33. The ’374 Patent states it issued on December 3, 2019, from an application filed on May 19, 2017. The ’374 Patent identifies Gregory Allan Thomas Hall and Phillip Emma as inventors and is titled “Multiple Linked Appliance with Auxiliary Outlet.” A copy of the ’374 Patent is attached as Exhibit 11. The ’374 Patent issued with 20 claims, of which claims 1, 9 and 17 are independent claims and the remaining claims are dependent.

34. The ’876 Patent states it issued on March 15, 2022, from an application filed on November 1, 2019. The ’876 Patent identifies Gregory Allan Thomas Hall, Phillip Emma, Jim Estill, Bryan Stuart Cunningham, and Dennis O’Brien as inventors and is titled “Multiple Linked Appliance with Auxiliary Outlet.” A copy of the ’876 Patent is attached as Exhibit 12. The ’876 Patent issued with 28 claims, of which claims 1,12, and 21 are independent claims and the remaining claims are dependent.

35. The Asserted Patents were all filed between 2014 and 2019 as continuations-in-part (“CIPs”) purportedly claiming priority to a parent application, U.S. Patent Application No. 12/317,632, which was filed on December 23, 2008, and published July 30, 2009, as U.S. Publication No. 2009/0188911 (“the ’911 Patent Pub.”).

36. The ’911 Patent Pub. discloses a microwave-refrigerator combination with a

microprocessor that manages power supply between the microwave, refrigerator, and an auxiliary outlet on the microwave.

37. The ’911 Patent Pub. published before the earliest priority date of the claims of the Asserted Patents and is thus prior art to all claims of the Asserted Patents.

38. On September 27, 2022, College Products filed a motion to dismiss the Texas Action for improper venue, explaining venue is improper for at least the following reasons: (1) College Products is an Iowa company; (2) College Products does not have or maintain a place of business in the Western District of Texas; and (3) none of the alleged acts of infringement occurred in the Western District of District. Defendant’s Motion to Dismiss Plaintiff’s Complaint for Improper Venue under Fed. R. Civ. P. 12(b)(3) at 1–6, *Intirion Corp. v. College Products, Inc.*, No. 6:22-cv-00459-ADA (W.D. Tex. Sept. 27, 2022), ECF No. 12. College Products repeatedly raised the issue of improper venue with Intirion before that motion to no avail.

39. Because Waco was an improper venue for Intirion’s claims and College Products’ counterclaims, on January 5, 2023, College Products filed its original Complaint in this action, seeking declaratory judgment of non-infringement and invalidity.

40. College Products filed this request for declaratory judgment in direct response to Intirion’s frivolous filing of a complaint in the Texas Action. On April 10, 2023, the Honorable Alan Albright of the Waco Division dismissed and transferred the Texas Action to this Court because the Western District of Texas was an improper venue. Memorandum Opinion & Order on Defendant’s Motion to Dismiss Plaintiff’s Complaint for Improper Venue under Fed. R. Civ. P. 12(b)(3), *Intirion Corp. v. College Products, Inc.*, No. 6:22-cv-00459-ADA (W.D. Tex. Sept.

27, 2022), ECF No. 33 (sealed), ECF No. 35 (redacted).[4] College Products filed this action prior to the transfer to protect its rights with its counterclaims of non-infringement and invalidity and to prevent Intirion from filing its lawsuit in other improper venues, which is a major strain on College Products' resources.

INTIRION'S UNLAWFUL CONDUCT IN THE MARKET

41. While the Texas Action was pending in Waco, Intirion engaged in unlawful conduct in the marketplace in an effort to shut College Products out of the market.

42. Upon information and belief, Intirion has made statements to College Products' customers and potential customers that (1) College Products infringes the Asserted Patents, (2) if customers do business with College Products, the customers could be liable for willful patent infringement, (3) the customers will have to buy the products again from Intirion due to the alleged infringement, (4) suggests College Products could be headed into bankruptcy, and (5) suggests College Products MicroChill Products are not safe to operate.

43. For example, College Products submitted a bid to San Diego State University ("SDSU") for its MicroChill products. Intirion also submitted a competing bid for its own products.

44. On May 12, 2022, Intirion's CEO Jim Estill sent San Diego State University ("SDSU") a letter notifying SDSU of the Texas Action in Waco, and characterizing College Products' MicroChill products as "counterfeit" goods that may pose safety risks to students. A copy of this May 12, 2022 letter is attached as Exhibit 13.

45. On July 14, 2022, Intirion's outside counsel sent a follow up letter to SDSU stating that SDSU should retain legal counsel to review the filing to consider its own financial

[4] A true and correct copy of the redacted order is attached as Exhibit 16.

liability for willful patent infringement if College Products "commences proceedings in Bankruptcy." A copy of this July 14, 2022 letter is attached as Exhibit 14.

46. Upon information and belief, Intirion made similar statements to other universities during bid season, including Springfield College, UMass Amherst, University of Idaho, Virginia Tech, Clemson, California State University – Chico, and others. College Products lost the bids to these universities to Intirion, even though College Products offered the MicroChill products at a lower price to students.

COUNT I
(Declaratory Judgment of Invalidity of the '974 Patent)

47. College Products incorporates and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

48. In the Texas Action against College Products, Intirion accused College Products of direct and indirect infringement of the '974 Patent either literally or under the doctrine of equivalents, citing College Products' sale and customer use of the MicroChill Products. Intirion Complaint ¶¶50-57.

49. The claims of the '974 Patent are invalid for failure to comply with one or more of the requirements of patentability as specified in 35 U.S.C. §§ 1 *et seq.*, including, without limitation, 35 U.S.C. §103.

50. As an example, the '974 Patent purportedly issued from an application that was filed on April 25, 2015. That application is a CIP purportedly claiming priority to the '911 Patent Pub. ("the '974 CIP Application").

51. New material was disclosed in the '974 CIP Application. That new material includes a USB port on a microwave.

52. The claims of the ’974 Patent recite a microwave-refrigerator combination where the microwave includes a USB port. The claims of the ’974 Patent claim material that was first disclosed in the ’974 CIP Application (i.e., USB port). Therefore, the earliest **priority** date for those claims is the filing date of the ’974 CIP Application, or April 25, 2015. The ’911 Patent Pub. published years before this date, is prior art to the ’974 Patent.

53. As discussed above, the ’911 Patent Pub. discloses a microwave-refrigerator combination with a microprocessor that manages power supply between the microwave, refrigerator, and an auxiliary outlet on the microwave.

54. Adding a USB port to appliances, like the ones disclosed in the ’911 Patent Pub., was known and obvious. As an example, USB ports have been used in a microwave long before the ’974 Patent was filed. *See, e.g.*, Chun, U.S. Patent Pub. No. 2004/0060932. Thus, the mere addition of a USB port in the ’974 Patent to a prior art microwave-refrigerator combination is obvious.

55. For at least the foregoing reasons, the ’974 Patent is invalid over the prior art.

56. College Products has been injured and damaged by Intirion’s allegations that it infringes an invalid patent.

57. Declaratory relief is both appropriate and necessary to establish (1) College Products has not and does not infringe any valid claim of the ’974 Patent and (2) the ’974 Patent is invalid and thus cannot be asserted against College Products.

58. As set forth above, an actual, concrete, justiciable, and immediate controversy exists between the parties regarding the invalidity of the ’974 Patent. College Products therefore seeks and is entitled to a declaratory judgment that the claims of the ’974 Patent are invalid and/or unenforceable.

COUNT II
(Declaratory Judgment of Non-Infringement of the ’974 Patent)

59. College Products incorporates and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

60. In the Intirion Complaint against College Products, Intirion accused College Products of direct and indirect infringement of the ’974 Patent either literally or under the doctrine of equivalents, citing College Products’ sale and customer use of the MicroChill Products. Intirion Complaint ¶¶50-57. College Products does not infringe the ’974 Patent for several reasons.

61. As one example, all independent claims (i.e., claims 1, 12, and 17) of the ’974 Patent recite the following limitations: “second power supply outlet connected to the source of power through the control circuit” / “second power supply outlet operatively connected to the source of power through operation of the control circuit.” The MicroChill Products do not satisfy these claim limitations literally or under the doctrine of equivalents.

62. As another example, independent claims 1, 2, and 17 of the ’974 Patent recite the following claim limitations: “sensing components connected to sense current draw at the second power supply outlet, and generating signals indicative thereof” / “sensors connected to sense current demanded at the second power supply outlet, and generating signals indicative thereof.” The MicroChill Products do not satisfy these claim limitations literally or under the doctrine of equivalents.

63. As yet another example, independent claims 1, 2, and 17 of the ’974 Patent recite the following claim limitation: “control circuit…configured to enable or disable power to the microwave oven, the first power supply outlet, and the second power supply outlet.” The

MicroChill Products do not satisfy this claim limitation literally or under the doctrine of equivalents.

64. As a further example, independent claim 1 of the ’974 Patent recites the following limitation: “wherein the front control panel includes the second power supply outlet, wherein the second power supply outlet includes at least one USB port which is not electrically powered and inoperative when the microwave oven draws cooking power.” The MicroChill Products do not satisfy this claim limitation literally or under the doctrine of equivalents.

65. As another example, independent claim 12 of the ’974 Patent recites the following limitation: “wherein the second power supply outlet includes a USB port that is not operative when the microwave oven draws cooking power.” The MicroChill Products do not satisfy this limitation literally or under the doctrine of equivalents.

66. As another example, independent claim 17 of the ’974 Patent recites the following limitation: “wherein the control circuit is configured to disable the second power supply outlet including the at least one USB port, when the refrigerator is operated during refrigerator compressor startup.” The MicroChill Products do not satisfy this limitation literally or under the doctrine of equivalents.

67. Because College Products’ MicroChill Products do not meet each and every claim limitation of independent claims 1, 12, and 17 the ’974 Patent, those products do not meet each and every claim limitation of dependent claims 2-11, 13-16, and 18-22 of the ’974 Patent.

68. For at least the foregoing reasons, College Products’ MicroChill Products do not infringe, directly or indirectly, any claim of the ’974 Patent either literally or under the doctrine of equivalents.

69. For at least the foregoing reasons, College Products' customer's use of the MicroChill Products does not infringe, directly or indirectly, any claim of the '974 Patent either literally or under the doctrine of equivalents.

70. College Products also does not induce or contribute to the infringement of the '974 Patent because there is no direct infringement of the '974 Patent, either literally or under the doctrine of equivalents.

71. As set forth above, an actual, concrete, justiciable, and immediate controversy exists between the parties about the alleged infringement of the '974 Patent. Thus, College Products seeks and is entitled to a declaratory judgment that it has not and does not and its MicroChill Products have not and do not infringe any claim of the '974 Patent. Such relief is necessary and appropriate at this time to resolve the parties' dispute.

COUNT III
(Declaratory Judgment of Invalidity of the '206 Patent)

72. College Products incorporates and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

73. In the Intirion Complaint against College Products, Intirion accused College Products of direct and indirect infringement of the '206 Patent either literally or under the doctrine of equivalents, citing College Products' sale and customer use of the MicroChill Products. Intirion Complaint ¶¶41-48.

74. The claims of the '206 Patent are invalid for failure to comply with one or more of the requirements of patentability as specified in 35 U.S.C. §§ 1 *et seq.*, including, without limitation, 35 U.S.C. §§103 and/or 112.

75. As an example, the ’206 Patent purportedly issued from an application that was filed on April 22, 2016. That application is a CIP purportedly claiming priority to the ’911 Patent Pub. (“the ’206 CIP Application”).

76. New material was disclosed in the ’206 CIP Application. That new material includes a smoke sensor. Because the claims of the ’206 Patent claim material that was first disclosed in the ’206 CIP Application (i.e., smoke sensors and their configurations), the earliest **priority** date for those claims is the filing date of the ’206 CIP Application, or April 22, 2016. At the earliest, the ’206 CIP Application’s earliest priority date is April 25, 2014, the effective filing date of the ’974 CIP Application. Because the ’911 Patent Pub. was published years before this date, it is prior art to the ’206 Patent.

77. As discussed above, the ’911 Patent Pub. discloses a microwave-refrigerator combination with a microprocessor that manages power supply between the microwave, refrigerator, and an auxiliary outlet on the microwave.

78. Adding a smoke sensor to appliances, like the ones disclosed in the ’911 Patent Pub., was known and obvious. As an example, smoke sensors have been used in microwaves since at least as early as 2007. *See, e.g.*, *ISDU: integrated smoke detector unit for commercial microwave ovens*, IRis, Northeastern University (April 17, 2007). Further, upon information and belief, microwaves have had smoke sensors since the 1990s.

79. College Products has been offering its MicroChill Products with smoke sensors as early as 2015.

80. For at least the foregoing reasons, the ’206 Patent is invalid over the prior art.

81. Claims 9 and 11 of the ’206 Patent recite the following claim limitation: the smoke sensor sensing smoke indicative of or corresponding to a “dangerous condition.”

82. Neither the ’206 Patent specification nor the claims identify what qualifies as a “dangerous condition.” This is an unequivocally ambiguous claim term with no identifiable boundary.

83. For at least the foregoing reasons, at least claims 9 and 11, and dependent claims 10 and 12 of the ’206 Patent are invalid for indefiniteness.

84. College Products has been injured and damaged by Intirion’s allegations that it infringes an invalid patent.

85. Declaratory relief is both appropriate and necessary to establish (1) College Products has not and does not infringe any valid claim of the ’206 Patent and (2) the ’206 Patent is invalid and thus cannot be asserted against College Products.

86. As set forth above, an actual, concrete, justiciable, and immediate controversy exists between the parties regarding the invalidity of the ’206 Patent. College Products therefore seeks and is entitled to a declaratory judgment that the claims of the ’206 Patent are invalid.

COUNT IV
(Declaratory Judgment of Non-Infringement of the ’206 Patent)

87. College Products incorporates and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

88. In the Intirion Complaint against College Products, Intirion accused College Products of direct and indirect infringement of the ’206 Patent either literally or under the doctrine of equivalents, citing College Products’ sale and customer use of the MicroChill Products. Intirion Complaint ¶¶41-48. College Products does not infringe the ’206 Patent for several reasons.

89. As one example, all independent claims (i.e., claims 1, 9, and 11) of the ’206 Patent recite the following limitation: a smoke sensor “configured to [be] reset” when there is no

further smoke detection. The MicroChill Products do not satisfy this claim limitation.

90. As another example, independent claim 1 of the ’206 Patent recites the following claim limitation: “at least one power control circuit…operative to cause electrical power to be selectively delivered to the microwave element”. The MicroChill Products do not satisfy this claim limitation.

91. As yet another example, independent claim 1 of the ’206 Patent recites the following claim limitation: “at least one sensor emitter and at least one sensor receiver.” The MicroChill Products do not satisfy this claim limitation.

92. As a further example, independent claim 9 of the ’206 Patent recites the following claim limitation: “wherein the smoke sensor is configured to be reset after ending the current cooking session prior to the set end time based on sensing the smoke indicative of the dangerous condition, to enable the microwave oven to deliver cooking power in a next subsequent cooking session responsive at least in part to the smoke sensor no longer sensing the smoke indicative of the dangerous condition.” The MicroChill Products do not satisfy this claim limitation.

93. As another example, independent claim 11 of the ’206 Patent recites the following claim limitation: “wherein the control circuit is configured to reset after ending the current cooking session prior to the set end time due to sensing the dangerous condition, to enable cooking power to again be available to the microwave oven in a next subsequent cooking session responsive at least in part to the smoke sensor no longer sensing the dangerous condition.” The MicroChill Products do not satisfy this claim limitation.

94. Because College Products’ MicroChill Products do not meet each and every claim limitation of independent claims 1, 9, and 11 the ’206 Patent, those products do not meet each and every claim limitation of the dependent claims 2-8, 10, and 12 of the ’206 Patent.

95. For at least the foregoing reasons College Products' MicroChill Products do not infringe, directly or indirectly, any claim of the '206 Patent either literally or under the doctrine of equivalents.

96. For at least the foregoing reasons, College Products' customer's use of the MicroChill Products does not infringe, directly or indirectly, any claim of the '206 Patent either literally or under the doctrine of equivalents.

97. College Products also does not induce or contribute to the infringement of the '206 Patent for at least the reasons stated above and because there is no direct infringement of the '206 Patent, either literally or under the doctrine of equivalents.

98. As set forth above, an actual, concrete, justiciable, and immediate controversy exists between the parties about the alleged infringement of the '206 Patent. Thus, College Products seeks and is entitled to a declaratory judgment that it has not and does not and its MicroChill Products have not and do not infringe any claim of the '206 Patent. Such relief is necessary and appropriate at this time to resolve the parties' dispute.

COUNT V
(Declaratory Judgment of Invalidity of the '374 Patent)

99. College Products incorporates and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

100. In the Intirion Complaint against College Products, Intirion accused College Products of direct and indirect infringement of the '374 Patent either literally or under the doctrine of equivalents, citing College Products' sale and customer use of the MicroChill Products. Intirion Complaint ¶¶ 32-39.

101. The claims of the ’374 Patent are invalid and unenforceable for failure to comply with one or more of the requirements of patentability as specified in 35 U.S.C. §§ 1 *et seq.*, including, without limitation, 35 U.S.C. §§103 and/or 112.

102. As an example, like the claims of the ’206 Patent, the claims of the ’374 Patent recite a smoke sensor. Because the claims of the ’374 Patent claim material that was first disclosed in the specification in April 2016 (i.e., smoke sensors and their configurations), the earliest **priority** date for those claims is April 22, 2016. At the earliest, the ’374 CIP Application’s earliest priority date is April 25 2014, the effective filing date of the ’974 CIP Application. Because the ’911 Patent Pub. was published years before this date, it is prior art to the ’374 Patent.

103. As discussed above, the ’911 Patent Pub. discloses a microwave-refrigerator combination with a microprocessor that manages power supply between the microwave, refrigerator, and an auxiliary outlet on the microwave.

104. As further discussed above, adding a smoke sensor to appliances, like the ones disclosed in the ’911 Patent Pub., was known and obvious. As an example, smoke sensors have been used in microwaves since at least as early as 2007. *See, e.g.*, *ISDU: integrated smoke detector unit for commercial microwave ovens*, IRis, Northeastern University (April 17, 2007). Further, upon information and belief, microwaves have had smoke sensors since the 1990s.

105. College Products has been offering its MicroChill Products with smoke sensors as early as 2015.

106. For at least the foregoing reasons, the ’374 Patent is invalid over the prior art.

107. Claims 9 and 17 of the ’374 Patent recite the following claim limitation: the smoke sensor sensing smoke indicative of or corresponding to a “dangerous condition.”

108. Neither the ’374 Patent specification nor the claims identify what qualifies as a “dangerous condition.” This is an unequivocally ambiguous claim term with no identifiable boundary.

109. For at least the foregoing reasons, at least claims 9 and 17, and dependent claims 10–16 and 18–20 of the ’374 Patent are invalid for indefiniteness.

110. College Products has been injured and damaged by Intirion’s allegations that it infringes an invalid patent.

111. Declaratory relief is both appropriate and necessary to establish (1) College Products has not and does not infringe any valid claim of the ’374 Patent and (2) the ’374 Patent is invalid and thus cannot be asserted against College Products.

112. As set forth above, an actual, concrete, justiciable, and immediate controversy exists between the parties regarding the invalidity of the ’374 Patent. College Products therefore seeks and is entitled to a declaratory judgment that the claims of the ’374 Patent are invalid and/or unenforceable.

COUNT VI
(Declaratory Judgment of Non-Infringement of the ’374 Patent)

113. College Products incorporates and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

114. In the Intirion Complaint against College Products, Intirion accused College Products of direct and indirect infringement of the ’374 Patent either literally or under the doctrine of equivalents, citing College Products’ sale and customer use of the MicroChill Products. Intirion Complaint ¶¶ 32-39. College Products does not infringe the ’374 Patent for several reasons.

115. As one example, all independent claims (i.e., claims 1, 9, and 17) of the ’374 Patent recite the following limitation: a smoke sensor “configured to [be] reset” when there is no further smoke detection. The MicroChill Products do not satisfy this claim limitation.

116. As another example, independent claim 1 of the ’374 Patent recites the following claim limitation that: “at least one power control circuit…operative to cause electrical power to be selectively delivered to the microwave element.” The MicroChill Products do not satisfy this claim limitation.

117. As yet another example, independent claim 1 of the ’374 Patent recites the following claim limitation: “at least one sensor emitter and at least one sensor receiver.” The MicroChill Products do not satisfy this claim limitation.

118. As further example, independent claim 9 of the ’374 Patent recites the following claim limitation: “wherein the smoke sensor is configured to be reset after ending the current cooking session prior to the set end time based on sensing the smoke indicative of the dangerous condition, to enable the microwave oven to receive cooking power in a next subsequent cooking session responsive at least in part to the smoke sensor no longer sensing the smoke indicative of the dangerous condition.” The MicroChill Products do not satisfy this claim limitation.

119. As another example, independent claim 17 of the ’374 Patent recites the following claim limitation: “wherein the control circuit is configured to reset after ending the current cooking session prior to the set end time due to sensing the dangerous condition, to enable cooking power to again be available to the microwave oven in a next subsequent cooking session responsive at least in part to the smoke sensor no longer sensing the dangerous condition.” The MicroChill Products do not satisfy this claim limitation.

120. Because College Products’ MicroChill Products do not meet each and every claim

limitation of independent claims 1, 9, and 17 the ’374 Patent, those products do not meet each and every claim limitation of the dependent claims 2-8, 10-16, and 18-20 of the ’374 Patent.

121. For at least the foregoing reasons, College Products’ MicroChill Products do not infringe, directly or indirectly, any claim of the ’374 Patent either literally or under the doctrine of equivalents.

122. For at least the foregoing reasons, College Products’ customer’s use of the MicroChill Products does not infringe, directly or indirectly, any claim of the ’374 Patent either literally or under the doctrine of equivalents.

123. College Products also do not induce or contribute to the infringement of the ’374 Patent for at least the reasons stated above and because there is no direct infringement of the ’374 Patent, either literally or under the doctrine of equivalents.

124. As set forth above, an actual, concrete, justiciable, and immediate controversy exists between the parties about the alleged infringement of the ’374 Patent. Thus, College Products seeks and is entitled to a declaratory judgment that it has not and does not and its MicroChill Products have not and do not infringe any claim of the ’374 Patent. Such relief is necessary and appropriate at this time to resolve the parties’ dispute.

COUNT VII
(Declaratory Judgment of Invalidity of the ’876 Patent)

125. College Products incorporates and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

126. In the Intirion Complaint against College Products, Intirion accused College Products of direct and indirect infringement of the ’876 Patent either literally or under the doctrine of equivalents, citing College Products’ sale and customer use of the MicroChill Product. Intirion Complaint ¶¶23-30.

127. The claims of the ’876 Patent are invalid and unenforceable for failure to comply with one or more of the requirements of patentability as specified in 35 U.S.C. §§1 *et seq.*, including, without limitation, 35 U.S.C. §§ 103 and 112.

128. As an example, like the claims of the ’206 Patent, the claims of the ’876 Patent recite a smoke sensor. Because the claims of the ’876 Patent claim material that was first disclosed in the specification in April 2016 (i.e., smoke sensors and their configurations), the earliest **priority** date for those claims is April 22, 2016. At the earliest, the ’876 CIP Application’s earliest priority date is April 25 2014, the effective filing date of the ’974 CIP Application. Because the ’911 Patent Pub. was published years before this date, it is prior art to the ’876 Patent.

129. As discussed above, the ’911 Patent Pub. discloses a microwave-refrigerator combination with a microprocessor that manages power supply between the microwave, refrigerator, and an auxiliary outlet on the microwave.

130. As further discussed above, adding a smoke sensor to appliances, like the ones disclosed in the ’911 Patent Pub., was known and obvious. As an example, smoke sensors have been used in microwaves since at least as early as 2007. *See, e.g.*, *ISDU: integrated smoke detector unit for commercial microwave ovens*, IRis, Northeastern University (April 17, 2007). Further, upon information and belief, microwaves have had smoke sensors since the 1990s.

131. College Products has been offering its MicroChill Products with smoke sensors as early as 2015.

132. For at least the foregoing reasons, the ’876 Patent is invalid over the prior art.

133. Claims 1 and 21 of the ’876 Patent recite the claim terms “a level of smoke” and “sensing an amount of smoke.”

134. Neither the ’876 Patent specification nor the claims identify what qualifies as “a level of smoke” or “sensing an amount of smoke.” This is an unequivocally ambiguous claim terms with no identifiable boundary.

135. For at least the foregoing reasons, at least claims 1 and 21, and dependent claims 2–11 and 22–28 of the ’876 Patent are invalid for indefiniteness.

136. College Products has been injured and damaged by Intirion’s allegations that it infringes an invalid patent.

137. Declaratory relief is both appropriate and necessary to establish (1) College Products has not and does not infringe any valid claim of the ’876 Patent and (2) the ’876 Patent is invalid and thus cannot be asserted against College Products.

138. As set forth above, an actual, concrete, justiciable, and immediate controversy exists between the parties regarding the invalidity of the ’876 Patent. College Products therefore seeks and is entitled to a declaratory judgment that the claims of the ’876 Patent are invalid and/or unenforceable.

COUNT VIII
(Declaratory Judgment of Non-Infringement of the ’876 Patent)

139. College Products incorporates and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

140. In the Intirion Complaint against College Products, Intirion accused College Products of direct and indirect infringement of the ’876 Patent either literally or under the doctrine of equivalents, citing College Products’ sale and customer use of the MicroChill Product. Intirion Complaint ¶¶23-30. College Products does not infringe the ’876 Patent for several reasons.

141. As one example, independent claims 1 and 21 of the ’876 Patent recite the following limitations: “at least one power control circuit…in operative electrical connection with the microwave oven and the refrigerator” / “refrigerator is in operative connection with the at least one electrical power control circuit.” The MicroChill Products do not satisfy these claim limitations.

142. As another example, independent claims 1 and 21 of the ’876 Patent recite the following limitations: “smoke sensor…in operative connection with the at least one power control circuit” / “smoke sensor is in operative connection with the at least one electrical power control circuit.” The MicroChill Products do not satisfy these claim limitations.

143. As yet another example, independent claims 1 and 21 of the ’876 Patent recite the following limitations: enabling the microwave “prior to the set end time based on the sensed level of smoke” / “prior to the set end time due to sensing the amount of smoke.” The MicroChill Products do not satisfy these claim limitations.

144. As further example, independent claim 12 of the ’876 Patent recites the following limitation: “safe.” The MicroChill Products do not satisfy this claim limitation.

145. Because College Products’ MicroChill Products do not meet each and every claim limitation of independent claims 1, 12, and 21 the ’876 Patent, those products do not meet each and every claim limitation of the dependent claims 2-11, 13-20, and 21-28 of the ’876 Patent.

146. For at least the foregoing reasons, College Products’ MicroChill Products do not infringe, directly or indirectly, any claim of the ’876 Patent either literally or under the doctrine of equivalents.

147. For at least the foregoing reasons. College Products' customer's use of the MicroChill Products does not infringe, directly or indirectly, any claim of the '876 Patent either literally or under the doctrine of equivalents.

148. College Products also do not induce or contribute to the infringement of the '876 Patent for at least the reasons stated above and because there is no direct infringement of the '876 Patent, either literally or under the doctrine of equivalents.

149. As set forth above, an actual, concrete, justiciable, and immediate controversy exists between the parties about the alleged infringement of the '876 Patent. Thus, College Products seeks and is entitled to a declaratory judgment that it has not and does not and its MicroChill Products have not and do not infringe any claim of the '876 Patent. Such relief is necessary and appropriate at this time to resolve the parties' dispute.

COUNT IX
(Unfair Competition in Violation of the Lanham Act 15 U.S.C. §1125

150. College Products incorporates and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

151. As detailed above, Intirion has used the legal process in an improper and unauthorized manner by initiating an action against College Products in the Western District of Texas, the filing of which was legally and/or factually baseless, and included frivolous assertions of patent infringement.

152. Compared to Intirion, College Products is a very small company.

153. Intirion asserted its claims for patent infringement in an improper venue as a means to prolong the legal process and to put a strain on College Products' resources.

154. As shown above in ¶¶47-149, Intirion's allegations of patent infringement are frivolous. Through the assertion of its claims, Intirion frivolously and falsely stated and misrepresented that College Products infringed the Asserted Patents.

155. Intirion acted in bad faith by using the filing of the lawsuit in an improper venue, characterizing College Products' products as unsafe and as counterfeit goods (*see, e.g.*, Ex. 13), and suggesting that College Products is near bankruptcy (*see, e.g.*, Ex. 14), as a means to scare off universities from accepting College Products' bids for the MicroChill Products. Upon information and belief, College Products has suffered a loss of reputation due to Intirion's defamatory statements and lost substantial business with several universities, which has irreparably harmed College Products.

156. Intirion's statements deceived, or had the potential to deceive, a substantial segment of potential customers for the MicroChill Products, such that the deception is material and likely to influence others' purchasing decisions.

157. The MicroChill Products are marketed, sold, and distributed in interstate commerce.

158. College Products has been or is likely to be injured as a result of ongoing false statements regarding the MicroChill Products.

159. As a result of the foregoing acts, Intirion has violated the Lanham Act, 15 U.S.C. §1125.

160. College Products seeks an injunction to permanently enjoin and restrain Intirion, its agents, servants, employees, attorneys, and all other persons in active concert or participation with Intirion, from disseminating false statements that College Products' MicroChill Products violate Intirion's patents and false statements about College Products' products and business.

College Products also seeks compensatory damages and special damages, plus exemplary and punitive damages, together with College Products attorneys' fees, expenses, costs and all other and further relief as this Court deems just and proper.

COUNT X
(Common Law Unfair Competition)

161. College Products incorporates and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

162. As detailed above, Intirion has used the legal process in an improper and unauthorized manner by initiating an action against College Products in the Western District of Texas, the filing of which was legally and/or factually baseless, and included frivolous assertions of patent infringement.

163. Compared to Intirion, College Products is a very small company.

164. Intirion asserted its claims for patent infringement in an improper venue as a means to prolong the legal process and to put a strain on College Products' resources.

165. As shown above in ¶¶47-149, Intirion's allegations of patent infringement are frivolous. Through the assertion of its claims, Intirion frivolously and falsely stated and misrepresented that College Products infringed the Asserted Patents.

166. Intirion acted in bad faith by using the filing of the lawsuit in an improper venue, characterizations of College Products' products as unsafe and as counterfeit goods (*see, e.g.*, Ex. 13), and suggestions that College Products is near bankruptcy (*see, e.g.*, Ex. 14), as a means to scare off universities from accepting College Products' bids for the MicroChill Products. Intirion's statements to universities are false and misleading. Upon information and belief, College Products has suffered a loss of reputation due to Intirion's defamatory statements

and lost substantial business with several universities, which has irreparably harmed College Products.

167. Intirion's acts unfairly and unreasonably restrict College Products' ability to compete with Intirion. College Products has and will continue to lose business that it would otherwise have been able to obtain on an open market, constituting unfair competition under the common law of Iowa.

168. Thus, College Products seeks an injunction to permanently enjoin and restrain Intirion, its agents, servants, employees, attorneys, and all other persons in active concert or participation with Intirion, from disseminating false statements that College Products' MicroChill Products violate Intirion's patents and false statements about College Products' products and business. College Products also seeks compensatory damages and special damages, plus exemplary and punitive damages, together with College Products attorneys' fees, expenses, costs and all other and further relief as this Court deems just and proper.

COUNT XI
(Tortious Interference with Prospective Business Relations)

169. College Products incorporates and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

170. College Products has valid, current and prospective business relationships with current and prospective customers of the MicroChill Products.

171. As set forth above, Intirion alleges the MicroChill Products infringe the Asserted Patents. Intirion's allegations of patent infringement are frivolous. As shown above in ¶¶47-149, the MicroChill Products do not include numerous features in the asserted claims of the Asserted Patents.

172. Intirion is actively competing with College Products in university bids. Intirion knew or should have known of College Products' prospective business relationships and has intentionally interfered with those relationships with a wrongful purpose or improper means by making defamatory statements to those third parties and threatening them with possible legal action on frivolous patent claims, such as SDSU (*see, e.g.*, Ex. 13 and Ex. 14).

173. As a direct and proximate result of Intirion's interference with College Products' current and prospective business relationships, Intirion has injured or will injure College Products irreparably and otherwise by reason of the deprivation of current or future business relationships or expectancies in clear violation of the common law of Iowa.

174. Thus, College Products seeks an injunction to permanently enjoin and restrain Intirion, its agents, servants, employees, attorneys, and all other persons in active concert or participation with Intirion, from disseminating false statements that College Products' MicroChill Products violate Intirion's patents and false statements about College Products' products and business. College Products also seeks compensatory damages and special damages, plus exemplary and punitive damages, together with College Products attorneys' fees, expenses, costs and all other and further relief as this Court deems just and proper.

COUNT XII
(Tortious Interference with Contractual Relations)

175. College Products incorporates and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

176. College Products has valid, contractual relationships with customers of the MicroChill Products.

177. As explained above, Intirion alleges the MicroChill Products infringe the Asserted Patents.

178. Intirion knew or should have known of College Products' contractual relationships and has intentionally interfered with those relationships with a wrongful purpose or improper means by sending, for example, letters to those third parties identifying Intirion's frivolous patent infringement claim, and by demanding documents from the universities outside of the federal court discovery process. *See, e.g.*, Ex. 13; Ex. 14; Ex. 15. For example, on August 15, 2019, Intirion's counsel sent a letter to College Products' customer Texas A&M – College Station. *See* Ex. 15 at 4–12. The letter informed Texas A&M – College Station that Intirion had filed a patent infringement lawsuit against College Products, and requested virtually every communication that College Products has had with Texas A&M – College Station. *See id*. These document requests were made while Intirion's lawsuit was pending in the Texas Action outside of the court's discovery process, to harass College Products' customer and interfere with its relationship with its customer. Upon information and belief, Intirion has made similar statements and contact with other College Products customers.

179. As a direct and proximate result of Intirion's wrongful and intentional interference with College Products' contractual relationships, Intirion has injured or will injure College Products irreparably and otherwise by reason of the deprivation of current or future contractual relationships or expectancies in clear violation of the common law of Iowa.

180. Thus, College Products seeks an injunction to permanently enjoin and restrain Intirion, its agents, servants, employees, attorneys, and all other persons in active concert or participation with Intirion, from disseminating false statements that College Products' MicroChill Products violate Intirion's patents and false statements about College Products' products and business. College Products also seeks compensatory damages and special damages, plus exemplary and punitive damages, together with College Products attorneys' fees, expenses,

costs and all other and further relief as this Court deems just and proper.

COUNT XIII
(Common Law Defamation)

181. College Products incorporates and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

182. Intirion, by and through its representatives, employees and agents, intentionally and maliciously published to third parties false and defamatory statements of and concerning College Products, including that its MicroChill Products are unsafe and counterfeit goods and College Products is on the verge of bankruptcy. *See, e.g.*, Ex. 13; Ex. 14. These are false and misleading statements.

183. The above-referenced published statements, and other identical or similar statements, which Intirion has published to third parties are defamatory on their face and are actionable *per se* as Intirion's statements are ill-founded with College Products' business, trade and/or professional reputation, practice and livelihood.

184. The above-referenced statements, and other identical or similar statements, which Intirion has published to third parties are defamatory under the State law of Iowa.

185. As a direct and proximate result of Intirion's publication of the above-referenced false and defamatory statements, and other identical or similar statements to third parties, College Products has suffered damages, including, but not limited to, damage to College Products' business reputation and goodwill in the marketplace and among the public, loss of business, loss of current and/or potential customers, and loss of economic gain.

186. At the time Intirion made the false and defamatory statements of and concerning College Products and its products, College Products was engaged in business and had maintained a good reputation.

187. As a result of the false and defamatory statements made by Intirion of and concerning College Products, particularly to College Products' existing and potential customers, College Products was and has been deprived of its good reputation, trade, and resulting profits, all of which it would have enjoyed but for Intirion's malicious and unlawful statements.

188. Intirion's statements of and concerning College Products and its products were made with malice, bad faith, and ill will.

189. As a result of Intirion's failure to retract its false and defamatory statements of and concerning College Products and its MicroChill Products, College Products has incurred increased injury and damages attributable to its sense of indignation and outrage.

190. Thus, College Products seeks an injunction to permanently enjoin and restrain Intirion, its agents, servants, employees, attorneys, and all other persons in active concert or participation with Intirion, from disseminating false statements about College Products' MicroChill Products and business. College Products also seeks compensatory damages and special damages, plus exemplary and punitive damages, together with College Products attorneys' fees, expenses, costs and all other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

College Products hereby requests a trial by jury for all issues so triable.

PRAYER FOR RELIEF

College Products respectfully requests this Court enter the following relief:

a. A declaration that the Asserted Patents are invalid;

b. A declaration that College Products does not infringe and has not infringed, directly or indirectly, any valid and claim of the Asserted Patents;

c. A declaration that College Products' customers do not infringe and have not infringed any valid and enforceable claim of the Asserted Patents by using the MicroChill Products;

d. That the Court adjudge and decree that Intirion engaged in unfair competition in violation of the Lanham Act, 15 U.S.C. §1125.

e. That the Court adjudge and decree that Intirion engaged in unfair competition under the common law.

f. That the Court adjudge and decree that Intirion tortiously interfered with College Products' prospective and/or contractual business relationships.

g. That the Court adjudge and decree that Intirion made defamatory statements to third parties concerning College Products and its products.

h. That the Court enter a preliminary and permanent injunction against Intirion to permanently enjoin and restrain Intirion, its agents, servants, employees, attorneys, and all other persons in active concert or participation with Intirion, from their unfair competition in the market.

i. That the Court enter a preliminary and permanent injunction against Intirion to permanently enjoin and restrain Intirion from tortiously interfering with College Products' business relationships.

j. That the Court enter a preliminary and permanent injunction against Intirion to permanently enjoin and restrain Intirion from making defamatory statements to third parties concerning Intirion or its products.

k. That the Court award College Products monetary damages in an amount to be determined at trial, for damages resulting from Intirion's unlawful, tortious, and defamatory

actions described herein.

l. An award of all damages, attorneys' fees, expenses and costs that this Court deems just and proper related to Intirion's unlawful, tortious, and defamatory actions described herein.

m. An award of prejudgment and post-judgment interest on College Products' damages award.

n. A declaration that this case is exceptional under 35 U.S.C. § 285 and an award of College Products' attorneys' fees, expenses, and costs; and

o. An award of all other and further relief as this Court deems just and proper.

Dated: April 25, 2023

Respectfully submitted,

CRARY HUFF, P.C.

/s/David C. Briese
David C. Briese, AT0011546
329 Pierce Street, Ste. 200
PO Box 27
Sioux City, Iowa 51102
Telephone: (712) 277-4561
Fax: (712) 277-4605
dbriese@craryhuff.com

BLANK ROME LLP
Domingo M. LLagostera
(admitted pro hac vice)
State Bar No. 24070157
Tel.: (713) 632-8682
Fax: (713) 228-6605
DLLagostera@BlankRome.com

Megan R. Wood
DC Bar No. 1024203
MWood@blankrome.com
Tel.: (202) 420-2753
1825 Eye Street NW
Washington, DC 20006

ATTORNEYS FOR PLAINTIFF COLLEGE PRODUCTS, INC.