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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
Portland Division

Robert M. Lyden,
an individual,
Plaintiff,

No. 3:14-CV-1586 MO

AMENDED COMPLAINT
FOR TRADEMARK
AND PATENT INFRINGEMENT

v.

DEMAND FOR JURY TRIAL

adidas America, Inc., a Delaware corporation,
adidas AG, a German entity,
adidas International Marketing B.V., a Dutch entity,
The Finish Line, Inc., an Indiana corporation,
Foot Locker, Inc., a New York corporation, and,
Dick's Sporting Goods, Inc., a Delaware corporation,
Defendants.

For his Amended Complaint against adidas America, Inc., adidas AG, and adidas International Marketing B.V. (hereinafter the adidas entities collectively “adidas” or “adidas Defendants”), and also The Finish Line, Inc., Foot Locker, Inc., and Dick’s Sporting Goods, Inc. (hereinafter “Retailer Defendants,” and in combination with the adidas Defendants collectively the “Defendants”), the Plaintiff Robert M. Lyden (“Lyden”) alleges as follows:

NATURE OF THE CASE

1. This is an action at law and in equity for trademark infringement, unfair competition, and unfair business practices, arising under the Trademark Act of 1946, 15 U.S.C. §§ 1051 et seq. (2009) (“Lanham Act”); the unfair business practices and unfair and deceptive trade practices acts of several states; and the common law.

2. Further, this is also a patent infringement action brought under the patent laws of the United States, including 35 U.S.C. §§ 271, 281, and 283-85.

PARTIES

3. In connection with previous Case No. 3:10-cv-1249-BR filed on October 12, 2010, some of the named adidas Defendants did not initially wish to accept service and responsibility for the complaint, but Lyden and the adidas Defendants later reached an agreement on the subject and caused to be filed “Stipulation re: Dismissal of Defendant adidas International B.V. and Related Discovery Issues,” as shown in attached **Exhibit 26**, provided herewith.

4. Likewise, the adidas Defendants adidas AG and adidas International Marketing B.V. have not wished to accept service and responsibility as a party to the present Complaint, and for this reason the information contained in Paragraphs 5-31 below is being provided to this Court.

5. On information and belief, Defendant adidas AG is a joint stock company organized and existing under the laws of the Federal Republic of Germany, having its office and principal place of business at Postach 11230, D-91072 Herzogenaurach, Federal Republic of Germany.

6. On information and belief, Defendant adidas America, Inc. is a corporation wholly owned by adidas North America, Inc., which is a non-public Delaware corporation, and adidas North America, Inc. is wholly owned by adidas AG which has no parent corporation, and no publicly held corporation owns 10% or more of the stock of adidas AG, as shown in attached **Exhibit 28**, provided herewith.

7. adidas America, Inc. has its principal place of business at 5055 N. Greeley Avenue, Portland, Oregon 97217. In this regard, according to the Defendants adidas America, Inc. allegedly manages U.S.-based operations on behalf of adidas AG, including sales, brand marketing, product marketing, product design, public relations, distribution, enforcement, and licensing of and for adidas-branded merchandise.

8. On information and belief, Defendant adidas International Marketing B.V. is a limited liability company that operates as a subsidiary of adidas AG with a principal place of business at Atlas Complex, Africa Building, Hoogoorddreef 9a, 1101 BA Amsterdam Z-O, The Netherlands.

9. On information and belief, Defendant adidas AG is the parent company to adidas America, Inc. and adidas International Marketing B.V. and substantially controls the relevant acts of these and other adidas entities. In particular, adidas AG provides substantial guidance and direction regarding material decisions relating to research, development, and introduction of product lines into the United States marketplace, including decisions relating to making and selling the adidas Springblade, and also the adizeo Primeknit Boost athletic shoes.

10. On information and belief, during all relevant times, Defendant adidas AG has had and continues to have substantial, systematic and continuing business operations in the United States, and in particular, using as a place of business at least the headquarters of adidas America, Inc. in Portland, Oregon.

11. On information and belief, Defendants adidas AG and adidas International Marketing B.V.'s officers, directors and executive management personnel have regularly traveled to the United States and some have been stationed for extended periods of time at the offices of adidas America, Inc. here in Portland, Oregon, during the period of infringement complained of herein.

12. On information and belief, a significant number of employees working in design, research and development, and /or holding executive positions at adidas America, Inc. are employees of adidas AG as indicated by their contracts and/or the origination and method of their receiving financial compensation, and despite the fact that many of these employees are U.S. citizens who reside here in the greater metropolitan area of Portland, Oregon.

13. On information and belief, Defendant adidas AG has used its and adidas America, Inc.'s staff and facilities in Portland, Oregon, to design, develop, and test the adidas Springblade and adizero Primeknit Boost athletic shoes.

14. On information and belief, the adidas Defendants have all availed themselves in this District Court venue and brought numerous legal actions relating to intellectual property therein: As shown in **Exhibit 36**, which shows results from an inquiry and search by Lyden within this Judicial District using PACER and the key word search term "adidas"; **Exhibit 37** which is an excerpt of the Complaint in Case No. 3:12-cv-00859 including paragraphs 8-9 therein, and showing both adidas AG and adidas America, Inc. as being plaintiffs in this Court; **Exhibit 38** which is a copy of a portion of the complaint in Case No. 00-cv-1392-AS in this Court, showing the parent adidas entities adidas-Salomon AG, adidas International, B.V., and also adidas America, Inc. as plaintiffs in this Court; **Exhibit 39** which is a copy of a portion of the complaint and exhibits in Case No. 3:12-cv-1779 in this Court, showing adidas America, Inc. and adidas AG as plaintiffs, and numerous trademarks assigned to adidas AG, adidas-Salomon AG, but also two trademarks Reg. No. 3,063,742 and Reg. No. 3,063,745 assigned to adidas International Marketing, B.V., and all of these **Exhibits 36-39** are attached and provided herewith.

15. Defendant adidas International Marketing B.V. holds intellectual property rights in its own name, including the adidas patents identified below. On information and belief, adidas International Marketing B.V. directly or indirectly licenses those rights, including the rights to the adidas patents identified herein to other adidas AG group companies, including to adidas America, Inc.

16. Defendant adidas International Marketing B.V. has at relevant times managed the procurement, maintenance, licensing and/or enforcement of its intellectual property rights via facilities and personnel located in Portland, Oregon and such activities have been directed at benefitting adidas America, Inc. and its market in Oregon and the United States.

17. On information and belief, Defendant adidas International B.V. has continuous and systematic activities in the United States and particularly in Portland, Oregon. It regularly provides legal advice and assistance to adidas America, Inc., including advice relating to the relevant Plaintiff's footwear patents and trademarks identified herein and before the present suit.

18. On information and belief, Defendant adidas International B.V. controls and directs the actions of certain adidas staff located at facilities in Portland, Oregon, including Miss Sara Vanderhoff stationed at adidas America, Inc., who reports or had previously reported to legal counsel for adidas International B.V. and adidas AG, and in particular, Tim Behean.

19. On information and belief, the former adidas Defendants' in-house counsel for adidas International B. V. and adidas AG, Tim Behean, is believed to have worked for at least adidas International Marketing B. V., and have made repeated trips to the United States, and particularly to Portland, Oregon, from at least year 2000 to the present in order to attend to matters related to the acquisition, procurement, licensing and/or enforcement of intellectual property rights for adidas International Marketing B.V., adidas America, Inc., and adidas AG.

20. In 2004, Lyden negotiated an out of court settlement from his home in Portland, Oregon with adidas Defendants' legal counsel Tim Behean in Europe regarding adidas America, Inc.'s infringement of Lyden's U.S. 6,243,880 relating to athletic shorts, as shown in the attached **Exhibit 29**, provided herewith.

21. In 2010, adidas AG become unresponsive to Lyden's efforts to negotiate and resolve a different patent infringement matter relating to the adidas Tunit soccer shoe, and Lyden was forced to bring a patent suit regarding adidas Defendants' infringement of four of his patents: U.S. 6,601,042, U.S. 7,016,86, U.S. 7,107,235, and U.S. 7,752,775 in case no. 3:10-cv-1249-BR filed on October 12, 2010, the Third Amended Complaint of which legal action is attached as **Exhibit 7**, provided herewith.

22. Lyden and adidas' legal representatives were later able to negotiate a 2011 Settlement Agreement out of court in the State of Oregon, which has been provided to this Court and is now sealed, and hereby incorporated by reference herein as **Exhibit 30**, and the case was dismissed on October 19, 2011.

23. In 2012 and continuing to the present, Lyden has been defending in the U.S. Patent and Trademark Office (hereinafter "USPTO") his U.S. 8,209,883 which has claims for knitted shoe uppers because adidas AG wished to launch its Primeknit athletic shoe in the United States to compete with Nike, Inc.'s commercially successful Flyknit athletic shoes. In this regard, adidas AG and not adidas America, Inc. requested on August 21, 2012 and still continues to sponsor an *Inter-Partes* reexamination of Lyden's U.S. 8,209,883 which can be viewed by using the USPTO PAIR system, and searching Serial No. 95/ 002,094, as shown on page two of the attached **Exhibit 35**, provided herewith.

24. The adidas AG sponsored reexamination of Lyden's U.S. 8,209,883 is still pending in the USPTO and a copy of the "Patent Owner's Rebuttal Brief" is provided and attached hereto as **Exhibit 27**.

25. Lyden's U.S. 8,209,883 is also presently being infringed by certain Nike, Inc. "Flyknit" athletic shoe products as disclosed in pending case no. 3:13-cv-00662-HZ in this Court, which has been stayed pending the conclusion of the on-going reexamination sponsored by adidas AG.

26. On information and belief, in various other matters, in-house legal counsel working for adidas International Marketing B.V. and business persons working for adidas AG and adidas America, Inc. have negotiated intellectual property agreements in whole or part in Portland, Oregon, as shown in **Exhibit 29** which is an e-mail communication between the adidas Defendants' former legal counsel Tim Behean and Lyden relating to their settlement of their patent infringement of U.S. 6,243,880 in 2004, and also **Exhibit 30** which is a copy of the 2011 Settlement Agreement between the adidas Defendants and the Plaintiff which has been provided to this Court and is now under seal, and is hereby incorporated by reference herein.

27. On information and belief, the control over the relevant business affairs and operations of adidas AG and/or adidas International Marketing B.V., and adidas America, Inc., have been so blurred, intertwined, and indistinct that these entities may be regarded *de facto* as a single entity or actor largely under the control of adidas AG. In order to provide further support: Attached as **Exhibit 31** is copy of an article entitled "Patrick Nilsson to Leave Adidas for Job in Sweden" by Andy Giegerich, published in the Portland Business Journal on April 17, 2014; Attached as **Exhibit 32** is a copy of the

article downloaded from the Internet entitled “Here’s Why Mark King is a Logical Choice to Head Adidas America,” by Matthew Kish, published in the Portland Business Journal on April 17, 2014; Attached as **Exhibit 33** is a copy of the article downloaded from the Internet entitled “Adidas Moves Head of Design from Germany to Portland,” by Matthew Kish, published in the Portland Business Journal on September 9, 2014; Attached as **Exhibit 34** is a copy of the article downloaded from the Internet entitled “Adidas Makes Another Move to Strengthen U.S. Operations,” by Matthew Kish, published in the Portland Business Journal on September 9, 2014; Attached as **Exhibit 35** is a copy of the transmittal letter of David K.S. Cornwell of Sterne, Kessler, Goldstein & Fox, P.L.L.C. the attorney of record for adidas AG regarding the company’s sponsorship of the pending Inter Partes Reexamination of my U.S. 8,209,883 in the U.S. Patent and Trademark Office showing on page 2 adidas AG as the real party in interest; Attached as **Exhibit 40** is a copy of information downloaded from the Internet showing an excerpt of the www.adidas.com website used by residents of the State of Oregon and the United States for ordering adidas goods, and completing sales transactions; Attached as **Exhibit 29** is an e-mail communication between former adidas Defendants’ legal counsel Tim Behean and Lyden relating to the negotiation and payment of an out of court settlement regarding the adidas Defendants’ infringement of U.S. 6,243,880 relating to athletic shorts; and, **Exhibit 30** is a copy of the 2011 Settlement Agreement which is under seal relating to the dispute and Complaint in previous Case No. 3:10-cv-1249-BR which shows the involvement and actions of adidas AG, adidas International Marketing, B.V., and not simply adidas America, Inc., regarding the settlement of patent

infringements which took place here in the United States, and the attachments recited in this paragraph all being provided herewith.

28. As the result of the adidas Defendants' use of this District Court venue and their repeated and willful infringing actions therein, the adidas Defendants are believed to be subject to the State of Oregon's Long Arm Statute as disclosed in the Oregon Rules of Civil Procedure, Rule 4, as shown in the attached **Exhibit 41**, provided herewith.

29. On information and belief, Defendant The Finish Line, Inc. is a corporation organized and existing under the laws of the State of Indiana, having its principal place of business at 3308 N. Mitthoeffer Road, Indianapolis, Indiana 46235. In this regard, The Finish Line, Inc. owns Finish Line, and also a Running Speciality Group of retail stores.

30. On information and belief, Defendant Foot Locker, Inc. is a corporation organized and existing under the laws of the State of New York, having its principal place of business at 112 West 34th Street, New York, NY 10120. In this regard, Foot Locker, Inc owns not only various Foot Locker stores, but also subsidiaries including Champs Sports, Footaction, and Eastbay retailers and/or online stores.

31. On information and belief, Defendant Dick's Sporting Goods, Inc. is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 345 Court Street, Corapolis, PA 15108.

JURISDICTION AND VENUE

32. Plaintiff realleges and incorporates all of the factual allegations of the preceding paragraphs 1-31.

33. This action arises in part under the trademark laws of the United States, and this Court has subject matter jurisdiction under section 39 of the Lanham Act, 15 U.S.C. § 1121, and under 28 U.S.C. §§ 1331 and 1338. Subject matter jurisdiction over Lyden's related state and common law claims is proper pursuant to 28 U.S.C. §§ 1338 and 1367.

34. This action also arises in part under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338 (a), 2201 and 2202. The District of Oregon is the proper venue pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) because a substantial part of the acts or omissions giving rise to Lyden's claims occurred in this District.

35. This Court has personal jurisdiction over Defendants because the Defendants have and continue to conduct substantial business in this forum including: (i) regularly doing or soliciting business, engaging in other persistent courses of conduct, and /or deriving substantial revenue from goods and services provided to individuals in the State of Oregon and in this Judicial District; and (ii) committing acts of trademark and patent infringement and/or contributing to or inducing acts of trademark and patent infringement by others in this Judicial District (and elsewhere in Oregon and the United States); or, have otherwise made or established contacts within the State of Oregon sufficient to permit the exercise of personal jurisdiction over Defendants.

BACKGROUND FACTS

36. Plaintiff realleges and incorporates all of the factual allegations of the preceding paragraphs 1-35.

37. The Plaintiff, Robert M. Lyden (“Lyden”) has a history as an athlete, coach, educator, and innovator. He was granted Masters’ Degrees in History and Public Administration from the University of Minnesota in 1982 and 1988, and then wrote two papers of social significance: “Start I Towards A Build-Down Proposal And Negotiated Treaty Between The United States And Soviet Union” which was shared with Ambassador Max Kampelman, and is attached as **Exhibit 46**, provided herewith; and, “Nine-Nine Questions A Dialogue On The Nature Of Just War With Francisco(s) De Vitoria And Suarez,” attached as **Exhibit 47**, provided herewith, which was shared with Archbishop John Roach, Head of the U.S. Council of Bishops, and later in 2003 with Michael Novak who served as an ambassador for the Bush Administration with the Vatican and European Community prior to the Second Gulf War, and also his Excellency Archbishop Celestino Migliore, Permanent Observer of the Holy See to the United Nations.

38. Lyden was certified as an educator to teach and coach K-12, and was associated as a coach with two Runners Up, and a State Championship Boy’s H.S. Track Team, and several individual Minnesota State Champions and Record Holders, as shown in attached **Exhibit 43**, provided herewith. He also coached and advised a former college teammate and member of the 1988 and 1992 U.S. Olympic teams in Track & Field, as shown in the attached **Exhibit 55**, provided herewith.

39. In connection with his work as an innovator over several decades, Lyden is a named inventor on fifty-three issued U.S. Patents, and has three patent applications pending as shown in attached **Exhibit 44**, provided herewith, and in order to provide some personal background information the resume of Robert M. Lyden is also attached as **Exhibit 1**, provided herewith.

40. Lyden worked for Nike, Inc. between May, 1990 – September, 1996 as a regular time employee as “Patents and Inventions Assistant” to the late Dan Potter, and then worked later as a $\frac{3}{4}$ time consultant and “inventor in the garage” to Nike, Inc. between September, 1996 – 1998.

41. Between 1993-1996, Lyden also designed and built his present home working nights and weekends, as shown in the attached **Exhibit 45**, provided herewith.

42. From September, 1996-1998, Lyden worked as a $\frac{3}{4}$ time consultant to Nike, Inc. inventing and providing over a dozen new patent disclosures. He is a named inventor on eighteen Nike, Inc. patents, and contributed to the research and development of numerous successful footwear products as evinced by some of the title pages of related patents assigned to Nike, Inc., attached **Exhibit 48**, provided herewith.

43. Lyden has worked independently as an inventor and consultant from September, 1998 - present. During this period, Lyden was granted, e.g., U.S. 7,770,306, U.S. 7,752,775, U.S. 7,107,235, U.S. 7,016,867, U.S. 6,601,042, U.S. 6,449,878 which is attached as **Exhibit 2**, provided herewith, U.S. 8,959,797 which is attached as **Exhibit 49**, provided herewith, U.S. D507,094 which is attached as **Exhibit 15**, provided herewith, which also discloses and claims spring elements for use in articles of footwear (hereinafter collectively referred to as the “Springshoe Patents”).

44. Further, Lyden had been granted Trademark Registration No. 76459378 which is now abandoned, and attached as **Exhibit 50**, provided herewith, but also Trademark Registration No. 3,629,011 for a spring element in the rearfoot area of footwear attached as **Exhibit 3**, provided herewith, and also Trademark Registration No. 3,633,365 for a heel counter and spring element in the rearfoot area of footwear and a copy is attached as **Exhibit 4**, provided herewith (hereinafter collectively referred to as the "Springshoe Marks").

45. In addition, Lyden has been granted U.S. 8,209,883 attached as **Exhibit 16**, and a brief relevant excerpt is attached for convenience as **Exhibit 19**, provided herewith, and he also applied for U.S. Patent Application Serial No. 13/465,020, the pending claims of which are attached as **Exhibit 51**, provided herewith, which also discloses and claims knitted uppers for articles of footwear (hereinafter collectively referred to as the "Knitted Upper Patents.")

46. In January, 2000, Lyden traveled to Abu Dhabi, United Arab Emirates and helped H.H. Sheikh Tahnoun Bin Zayed Al Nahyan win a 160km equine distance race establishing a new World's Record, and two photos from the event are attached in **Exhibit 52**, provided herewith.

47. On October 13, 2000, Lyden entered into a first Option and Intellectual Property License Agreement with Fila, S.p.A. which is attached as **Exhibit 53**, and made or caused to be over 20 Springshoe samples in exchange for financial compensation. A draft intellectual property license agreement was also negotiated and prepared for signature, but Fila S.p.A. went up for sale and the deal was not consummated. Lyden made and caused to be made shoes having spring elements and heel counters during this

time period, as shown in attached **Exhibit 54**, provided herewith, and some carbon fiber spring components parts for Springshoe samples were made in the Thermadore oven at his home as shown in attached **Exhibit 57**, provided herewith.

48. Between March 4, 2002 and December 11, 2002, Lyden was engaged in a business “Intellectual Property and Prototype Agreement” with Nike, Inc., and was paid six figure compensation in exchange for making and delivering at least 10 Springshoe samples, and some of these samples are shown in the two photos shown in attached **Exhibit 56**, provided herewith.

49. Lyden made Springshoe shoe samples using a blue colored Nike, Inc. SHOX R4 Running upper on September 30, 2002, as shown in the copy of a relevant photo which is attached as **Exhibit 58**, provided herewith.

50. Lyden was granted U.S. 6,449,878 on October 17, 2002, which is attached as **Exhibit 2**, provided herewith.

51. Lyden filed for U.S. Design Patent Application Serial No. 29/167,845 on October 20, 2002, which was later granted as U.S. D507,094 on July 12, 2005, a copy of which is attached as **Exhibit 15**, provided herewith.

52. On October 15, 2002, Lyden had also filed an application for Trademark Registration No. 76459378 which was granted and remained in force until June 9, 2007 when he let this trademark go abandoned as shown in attached **Exhibit 50**, provided herewith. In this regard, the shape of the Springshoe trademark was later changed somewhat, as can be seen in the attached **Exhibit 3** which includes a copy of the search result obtained using the USPTO TESS system showing Trademark Serial Number 77310958 filed October 23, 2007, now Registration No. 3,629,011, provided herewith.

53. When Lyden filed the application for Trademark Registration No. 76459378 on October 15, 2002, he was engaged in a business “Intellectual Property and Prototype Agreement” with Nike, Inc. attached as **Exhibit 11**, provided herewith, and he had made and effective sold at least ten sample Springshoes to Nike, Inc. which were not returned under the terms of the agreement in exchange for financial compensation for Lyden and two business partners.

54. Lyden’s contractual agreement was with the largest footwear company in the United States, Nike, Inc., which was then paying the sum of \$300,000. dollars for an option on the Springshoe and related intellectual property and for the provided Springshoe samples.

55. Some of the samples made by Lyden provided better performance results in lab testing than the Nike SHOX R4 running shoe of Nike, Inc., as discussed and shown in attached **Exhibit 60**, provided herewith. In brief, the Springshoe had recorded a low peak g score which is a measure of the quality of cushioning and simultaneously also the highest spring efficiency relative to any previous running shoe, and by a significant margin.

56. Lyden’s e-mail communications with Tom McGuirk and/or Geoff Hollister at Nike, Inc. between March and October, 2002, attached as **Exhibit 61-65**, provided herewith, demonstrate that Lyden showed the blue colored sample Springshoe made using the Nike, Inc. SHOX R4 running shoe upper to Nike, Inc., and that Lyden’s filing for the Trademark Registration No. 76459378 constituted use, and also that his intent to use the mark was genuine.

57. Hollister was Nike, Inc.'s second employee and he felt strongly about the merits of the Springshoe. When Nike, Inc.'s research & development department later passed on acquiring the Springshoe and related intellectual property rights, Hollister took presentation materials and footwear samples including a pair in size 10 consistent with the image provided in Lyden's applications for the trademarks at issue and attempted to speak with Phil Knight about it, but when he arrived at Knight's office someone in research & development called his secretary at the last minute, and nixed Hollister's attempt to show the Springshoe citing unknown legal reasons. Hollister felt that he had been bushwhacked by someone in research & development who didn't want Knight to find out about the decision, and believed that it was not in the interest of Nike, Inc.

58. On December 10, 2002, Lyden was informed by Allen Schrock that Nike, Inc. would not be purchasing or licensing his intellectual property relating to footwear as shown in the attached **Exhibit 66**, provided herewith. Several years later, Lyden discovered that Nike, Inc. starting filing patent applications directed to the same subject matter contained in his patents a week later.

59. By 2003, Fila, S.p.A. had been sold to an investment group in the United States, and the new CEO was an ex-adidas executive named Jon Epstein. Further, Mikal Peveto, who Lyden knew from working together at Nike, Inc. in the early 1990's, and who later worked for adidas AG, had by that time moved back to the United States and also taken a position with the new Fila organization. As shown in the attached **Exhibit 67**, provided herewith, Lyden was invited to visit with Fila in New York City and then pitched to Epstein and Peveto his intellectual property and "Q-Shoe" or Springshoe including a sample having a Nike SHOX R4 running shoe upper similar to the

one shown in the photos submitted by Lyden in his applications for the trademarks at issue in this case.

60. In 2003, Lyden also showed a Springshoe sample which included a Nike SHOX R4 running shoe upper to Bob Butler who was then the person in charge of making decisions at their New York headquarters regarding which shoes would be marketed and sold within the Foot Locker, Inc. retail chain, and he was interested in buying and carrying Springshoes, as shown in attached **Exhibit 67**, provided herewith. In this regard, Foot Locker, Inc. was willing to purchase and market shoes based on the sample “Chop job” shoe sample including the Nike SHOX R4 running shoe upper that Lyden had made and provided, but then wanted to know which brand? As can be seen in the attached e-mail, **Exhibit 67**, provided herewith, Lyden then told Butler that he thought it would be Fila, and Butler was good with that scenario.

61. In this regard, when companies like Nike, Inc. and adidas et al. sell footwear to major retail accounts, they don’t show up with semi-trucks and trailers loaded with shoe boxes at the loading dock and warehouse of Foot Locker, Inc. rather they do much as Lyden has done and then will often show models, proto-types, artistic renderings, boards, and / or salesman shoe samples. Sometimes an actual shoe sample which can be worn does not yet exist for exhibiting and showing at major trade shows, but only a model which has been made in a model shop and is provided for review by prospective retail customers. In this regard, the actual sale of footwear is sometimes an oral contract between the parties which may be followed up by a written one, and then shoes are manufactured, delivered, and invoiced.

62. Springshoes were sometimes given away as promotional sales samples by Lyden, and then used along with others Springshoe samples, documents and things to pitch the Springshoe and his relevant intellectual property to various individuals and companies. Lyden's Springshoes samples were then associated with option and/or license deals with Fila, Inc, Nike, Inc., Pearl Izumi, and his offers of sale to and acceptance by individuals at the Foot Locker and Fleet Feet retail chains. Accordingly, the image of a Springshoe sample including a Nike, Inc. SHOX R4 running shoe upper that was provided in Lyden's applications for the trademarks at issue attached as **Exhibit 58**, provided herewith, was associated with Springshoes used in commerce.

63. Lyden and Jon Epstein communicated and attempted to negotiate a business agreement, but could not get together because Fila, Inc. was not able to then commit funds sufficient to make and produce the Springblade, or license Lyden's intellectual property.

64. In the summer of 2003, Lyden visited Abu Dhabi, United Arab Emirates and gave H.H. Sheikh Tahnoun Bin Zayed Al Nahyan a pair of the custom made Springshoes having the Nike SHOX R4 running shoe upper which had been made in a blue color way as shown in an image similar to that provided in Lyden's applications for the trademarks at issue **Exhibit 58**, but also a black, grey, and red color way as shown in attached **Exhibit 68**, provided herewith. In this regard, Lyden had made several pairs of Springshoes in each of these color ways for use as promotional samples when pitching to individuals, footwear companies, and retailers. H.H. Sheikh Tahnoun expressed his wish to provide investment for launching a new footwear company, and Lyden returned home to work on finalizing the agreement and to make preparations.

65. Lyden authored a 464 page book entitled Distance Running, published in August, 2003, and the front and back covers, table of contents, and excerpts from Chapter 10, entitled “Shoe Weight And Mechanical Efficiency,” pages 312-319 is attached as **Exhibit 69**, provided herewith.

66. In September 2003, Lyden and his wife of twelve years separated and their divorce was made final in 2004. Further, H.H. Sheikh Zayed, who had founded and ruled the United Arab Emirates for over 60 years passed away in 2004, which then caused a change in responsibilities and focus with Lyden’s contacts there.

67. In 2004, the adidas Defendants began making athletic shorts which infringed upon Lyden’s U.S. 6,243,880. Lyden caught this infringement early, and was able to settle the matter with the adidas Defendants’ legal counsel Tim Behean on September 17, 2004, as shown in the attached **Exhibit 29**, provided herewith.

68. In his discussions and communications with Behean, Lyden disclosed his most recently filed and issued footwear patents including U.S. 6,449,878, and a business plan for his start-up company Q Branch, Inc. Lyden was informed that adidas had no interest in purchasing or licensing his intellectual property

69. However, less than a year later, adidas starting selling the “Tunit” soccer shoe which conflicted or infringed upon Lyden’s footwear patents which had previously been disclosed to adidas, and in particular, the subject matter disclosed in Lyden’s U.S. 6,601,042, and later issued U.S. 7,016,867, and U.S. 7,107,235.

70. In the Fall of 2004, Lyden was able to pitch his Springshoe at the so-called “Angel Oregon” event for local investors. As a result, Lyden attracted and later fended off several would-be local investors who adopted the tactic of yelling and screaming at

him like high chair tyrants in an attempt to compromise his better judgment, and permit them to have a controlling interest in his small business effort, and then for less than what a footwear designer makes in a year. Accordingly, local inventors should beware of “sharks” in the investment community here behaving badly.

71. On November 24, 2004, Lyden’s work on footwear was featured in the article entitled “If The Shoe Fits” by Dave Fitzpatrick published in the Willamette Week newspaper which included a photo showing Lyden holding a Springshoe, which is attached as **Exhibit 5**, provided herewith.

72. In January 2005, Lyden was featured in the “SIJ Profile” article in the Sustainable Industries Journal, which is attached as **Exhibit 17**, provided herewith. This article included a photo showing a point of purchase display that was designed and made by Lyden and also his innovative Springshoes.

73. In early 2005, adidas America, Inc.’s former President and worldwide creative director of adidas AG, Peter Moore, visited Lyden at his home in Aloha, Oregon, and tested several prototype walking and running shoes. Lyden provided Moore with a copy of his business plan and also copies of his patents relating to athletic footwear for review and a presentation to the acting President of adidas America, Inc. However, Moore’s efforts were unsuccessful and several months later he reported to Lyden that adidas was not interested in purchasing or licensing Lyden’s intellectual property.

74. On February 11, 2005, Lyden’s work on footwear was featured in the article entitled, “Dressed for Innovation” in the Portland Business Journal, attached

hereto as **Exhibit 6**. In this article, former adidas America Inc.’s President Peter Moore and Ned Frederick who had been Nike, Inc.’s first lab director made favorable remarks, and Lyden’s business efforts then looked promising. This article also indicated that Lyden was seeking investors for his start up company.

75. However, what happened next was that the adidas Defendants launched the “Tunit” soccer shoe as their brand statement product in the Spring of 2005, and the product infringed upon several of Lyden’s patents.

76. In November 2005, approximately fourteen months after being told by adidas’ legal counsel that the company had no interest in his footwear patents, and nearly five years after the priority date of the relevant Lyden footwear patents, Lyden also learned that adidas was attempting to patent some of the same subject matter that Lyden previously offered to sell or license to adidas. The adidas patent application of concern was U.S. patent application serial number 11/064,439, now U.S. 7,406,781, filed February 23, 2005.

77. After discovering the adidas’ patent application, Lyden called the legal counsel for adidas, Tim Behean, and reminded him about the Lyden patents that contained essentially the same subject matter. Lyden once again offered to license or sell his intellectual property to adidas, but was informed that the company had no interest in purchasing or licensing Lyden’s intellectual property.

78. Lyden sent an e-mail communication to adidas counsel Tim Behean on November 23, 2005, attached as **Exhibit 70**, provided herewith, which includes a relevant excerpt of his business plan dated September, 2005 and shows that the adidas Defendants were then provided with and offered Lyden’s intellectual property portfolio

including U.S 6,449,878, **Exhibit 2**, U.S. Design Patent D507,094, **Exhibit 15**, and also allowed Springshoe Trademark Registration No. 76459378. However, the adidas Defendants continued to infringe and make and sell the “Tunit” soccer shoe in the United States. Over the next several years, Lyden tried to convince the adidas Defendants to enter into an equitable business agreement, but to no avail.

79. In 2006, Lyden was invited by Li Ning, a Chinese footwear and apparel company to visit them in Beijing, China. A Springshoe including the Nike SHOX R4 running upper consistent with the one shown in the applications of the trademarks at issue went along for the trip along with other custom shoes and promotional samples. In retrospect, Lyden believes that Li Ning was more interested in getting inspiration than paying money for something. The company decided to try to create their own exciting brand technology instead of purchasing or licensing Lyden’s intellectual property, but it has not worked out for them.

80. Between January and July, 2007, Lyden was engaged in an Intellectual Property Option And License Agreement with DashAmerica, Inc. dba Pearl Izumi, as shown in attached **Exhibit 71**, provided herewith. As shown in Appendix C on page 23 thereof, Lyden and his partners were to be guaranteed 1.45 million dollars in minimum royalties over a five year period, and as shown on page 7, Section 3.4 (c) thereof, the agreement also included a 7 million dollar buy-out clause for Lyden. However, Pearl Izumi was sold to Shimano, Inc. for about 65 million by its parent company Nautilus, Inc. in order to cover its financial debt, and the license agreement was terminated.

81. On July 9, 2007, E.C. Frederick, who had served as Nike, Inc.’s first research laboratory director (and who later served as a expert witness for the adidas

Defendants in their sponsored *Inter Partes* reexamination of Nike, Inc.'s U.S. 7,347,011 by Dua et al., IPR 2013-00067 in 2012), provided his independent lab tests results concerning the stability of a Springshoe sample made by Lyden using a Brooks Adrenaline shoe at the request of Pearl Izumi, and the results were favorable as shown in the Commentary section on pages 10-11, as shown in the attached **Exhibit 72**, provided herewith.

82. Lyden noticed that the adidas Defendants were filing and prosecuting conflicting patents in the USPTO for substantially the same matter as contained in his own previous patents, and these “knock off” patents related to the Tunit soccer shoe and included what are now U.S. 7,730,637 and U.S. 7,406,781 by Wolfgang Scholz. In response, Lyden filed three protests against these two adidas patents under 37 C.F.R. § 1.291. However, only one of these three protests was entered by the USPTO during the prosecution of the two issued adidas patents, and it was then the prerogative of the adidas Defendants to enter the two protests. Despite Lyden's efforts to convince the adidas Defendants to be candid with the PTO, the company withheld and did not make these two protests of record during the prosecution of U.S. 7,406,781 and U.S. 7,730,637 in blatant violation of 35 U.S.C. §111, and 37 C.F.R. § 1.56.

83. In August, 2007, Lyden had a chance meeting and conversation with Al Van Noy and Steve Vincent who are directors of the adidas innovation team at adidas America, Inc. outside of the Blue Hour restaurant in Portland, Oregon. Lyden then discussed the merits of his patents relating to the adidas Tunit soccer shoe, and also his Springshoe lab test results and the possibility of making a formal presentation to adidas America, Inc.

84. On August 13, 2007, Lyden followed up and sent an e-mail to adidas legal counsel Tim Behean attached as **Exhibit 42**, provided herewith, and discussed his meeting with Van Noy and Vincent and also provided a copy of his business plan and offered to sell or license his intellectual property including U.S. 6,449,878, **Exhibit 2**, US D507,094, **Exhibit 15**, and the allowed trademark applications associated with Trademark Registration Nos. 3,629,011, and 3,633,365, **Exhibits 3** and **4** to the adidas Defendants. However, the adidas Defendants did not take a license or purchase Lyden's intellectual property.

85. On October 23, 2007, Lyden filed for Trademark Registration Nos. 3,629,011, **Exhibit 3**, and 3,633,365, **Exhibit 4**.

86. On February 25, 2008, Lyden filed a complaint in this venue styled *Robert M. Lyden v. HD Sports, Ltd. and Riedell Shoes, Inc.* 08-cv-0228 JO, which is attached as **Exhibit 73**, provided herewith, for patent infringement of his U.S. 6,523,835 regarding the parabolic figure ice skate blade, and this complaint was settled out of court. In fact, Lyden became friends with Roger Margereson and George Brumpton of HD Sports, Ltd., and after concluding a business agreement with the company gave autographed photos of Jane Fonda and Brigitte Bardot to them as shown in attached **Exhibits 74** and **75**, provided herewith. The parabolic figure ice skate blades made by HD Sports, Ltd. of England associated with the John Wilson brand and are used by Olympic skaters as shown in attached **Exhibit 76**, provided herewith.

87. In 2008, Lyden also pitched his Springshoe concepts and business plan to Giorgio Armani because Enzo Zanchetta who had been in charge of product development for Fila, S.p.A. and an advocate for the Springshoe back in 2000-2001, had taken a

position with the Armani group. Giorgio Armani liked the Springshoe, but said that it was too technical for his own brand, and instead thought that Nike, Inc. or the adidas Defendants should do it. “Being Armani” (the name of his autobiography) he was right, and also prophetic. An excerpt of Lyden’s pitch to Armani for the new driving shoe including some technical and patent drawings showing how the shoe can be custom made and renewed, but also including some artistic renderings for making commercial products is attached as **Exhibit 77**, provided herewith. As can be readily understood, there is a lot of work that goes into making a design that is looks “clean,” functional, and attractive. A photo of the Armani driving shoe that Lyden modified and created for the presentation to Giorgio Armani is attached as **Exhibit 78**, provided herewith. Enzo Zanchetta later returned the custom Armani Springshoe to Lyden and he now wears it sometimes in summer.

88. Lyden has also found that it also takes a lot of time to approach and get a response from companies. In his experience, a simple answer of yes or no which needs to be processed by a company’s legal department normally takes about 10-30 days. When a company has some real interest, then the decision making cycle is more like 3-6 months, and regarding a decision to enter into an option, license, or purchase agreement the cycle is more often between 6 months to a year.

89. By 2008, Mikal Peveto had left Fila, Inc. and after an attempt to start-up a small company called CUSTOMATIX for selling custom made to order footwear in Santa Cruz, California, he returned to Portland, Oregon. Lyden happened to bump into Peveto one afternoon walking in a grocery store in the Pearl District. Besides serving as a consultant to several footwear companies over the next two years, he also then

attempted to get investors and /or to sell or license Lyden's intellectual property to existing members of the footwear industry.

90. Between 2008-2010, some of the presentation materials Peveto made and/or used in his pitches to various individuals and companies include the attached **Exhibits 2, 3, 4, 5, 15, 18, 21, 22, 79 and 80**, provided herewith. In this regard, Peveto was present when Lyden pitched the Springshoe and his business plan to Tom Raynor, the former majority shareholder of the Fleet Feet chain of retail stores. Raynor tried on several custom Springshoes samples and prototypes including one including a Nike SHOX R4 running shoe upper like the one shown in the photo submitted during the prosecution of Lyden's trademarks at issue, and then expressed a willingness to carry the Springshoe and possibly even invest in his business start-up.

91. However, Lyden was not able to secure enough investment because of the adidas Defendants' continued infringement of his patents which then and now casts a dark cloud over his intellectual property and business efforts. Nobody with small pockets wanted to buy into a lawsuit with a company having big pockets.

92. Raynor became seriously ill with cancer, and then sold his shares of Fleet Feet to an investment group in 2012.

93. In April, 2008, Peveto, presented Lyden's intellectual property portfolio to adidas AG's Chief Marketing Officer in charge of global footwear marketing Bernd Wahler and offered to license or sell Lyden's intellectual property to adidas AG. Peveto also later met personally with former adidas America Inc.'s President, Patrik Nilsson to present Lyden's patent portfolio and discuss business opportunities. However, the adidas

Defendants did not wish to purchase or license Lyden's intellectual property, but instead the company offered Peveto the position of Director of Running.

94. On information and belief, Mikal Peveto took the job as Director for Running for adidas AG and began working at the adidas America, Inc. campus in Portland, Oregon in early 2010.

95. Between 2005-2010, and with explicit knowledge of Lyden's patents covering the same subject matter, adidas heavily marketed in the United States and globally the "revolutionary" technology of the Tunit soccer shoe during several World and Euro Cups, and the 2008 Olympic Games.

96. By September, 2010, adidas legal counsel had become completely unresponsive to Lyden's efforts to sell or license his relevant footwear patents, and the adidas Tunit soccer shoe was infringing upon four of Lyden's utility patents, namely, U.S. 6,601,042, U.S. 7,016,86, U.S. 7,107,235, and U.S. 7,752,775.

97. Lyden then filed a complaint for patent infringement in this venue Case No. 3:10-cv-1249 BR on October 12, 2010, and the third amended complaint is attached as **Exhibit 7**, provided herewith.

98. As shown in the Third Amended Complaint, **Exhibit 7**, on page 11, the adidas Tunit soccer shoe as commercialized was strikingly similar to Figure 38 in the relevant Lyden footwear patents and mapped one-to-one, in all material respects, to a cross-section of adidas' model +F50.7 Tunit soccer shoe.

99. During an Oral Hearing on September 2, 2011, the opposing counsel admitted in open court that the adidas Defendants were infringing upon Lyden's U.S.

U.S. 7,752,775, as shown in the attached **Exhibit 59**, provided herewith, on page 11, line 24 through page 12, line 8.

100. This previous complaint of Lyden v. the adidas Defendants, Case No. 3:10-cv-1249 BR was eventually settled out of court by the legal representatives of adidas and Lyden, and the case was dismissed on October 19, 2011.

101. However, Lyden later discovered that at the very same time the complaint over the adidas Tunit soccer shoe was being negotiated and settled, the adidas Defendants were already at work on their next patent infringements.

102. Accordingly, the present infringement of Lyden's U.S. 6,449,878, **Exhibit 2**, and Trademarks Registration Nos. 3,629,011, and 3,633,365, **Exhibits 3-4**, and U.S. D507,094, **Exhibit 15**, and U.S. 8,209,883, **Exhibits 16 and 19**, and U.S. 8,959,759, **Exhibit 49**, constitutes the latest twist in what has become a pattern of improper conduct by the adidas Defendants over the last decade. In this regard, adidas has as a predatory method of doing business repeatedly chosen to willfully infringe upon Lyden's patent and trademark rights and also interfered with his business efforts.

103. On December 14, 2010, adidas had filed a patent application Serial No. 12/967,974 by Lucas et al. for an article of footwear having spring elements published by the USPTO as U.S. 2011/0138652 on June 16, 2011, and a copy is attached as **Exhibit 81**, provided herewith.

104. Further, consistent with adidas' previous improper behavior in filing for patents knocking off the earlier Lyden patents relating to adidas' infringing Tunit soccer shoes, the company again failed to disclose to the Patent Examiner handling the Lucas et al. case the relevant prior art patents of Lyden. Instead, the patent examiner found some

of Lyden's patents and made them of record. At this time, the original patent application by Lucas et al. has received a final rejection, and although a continuation application has been filed, it has not been granted.

105. On December 1, 2014, after having been called out in the original Complaint in this case for not having made Lyden's relevant patents of record, the attorney of record handling the adidas Defendants' patent application Serial No. 12/967,974 by Lucas et al. made the Lyden patents of record, as shown in the attached **Exhibit 83**, provided herewith.

106. Again, the previous Lyden complaint with the adidas Defendants Case No. 3:10-cv-1249 BR in this venue was settled in October, 2011. Only a few months later on February 21, 2012, Nike, Inc. launched the Flyknit shoe upper in New York City, and an excerpt of Nike, Inc.'s presentation can be found on YOUTUBE in the video entitled "Nike Innovation Summit NYC 2012": <http://youtu.be/WSLrHo3BHV0>

107. The adidas Defendants countered this Nike, Inc. initiative by introducing the Primeknit shoe upper in June, 2012. In this regard, the Court's attention is respectfully directed to the article entitled: "It's a Seamless Revolution: Adidas Follows Nike Flyknit with Primeknit" by Eric Siemers, Portland Business Journal, July 26, 2012, which is attached as **Exhibit 10**, provided herewith.

108. In contrast with the "first-of-its-kind running shoe" misrepresentation found in the adidas Defendants' press statement quoted in **Exhibit 10**, the company had prior knowledge and possession of Lyden relevant patent information relating to knitted shoe uppers which Lyden had earlier filed with the USPTO. For example, Lyden's pending patent application Serial No. 10/279,626 filed on October, 24, 2002 which later

matured as U.S. 7,107,235 contained relevant information on knitted shoe uppers and it had been provided to the adidas Defendants for review at least as early as 2004-2005.

109. Furthermore, the intellectual property portfolio of Lyden including the relevant disclosure of knitted shoe uppers had been pitched by Peveto to several adidas executives in April, 2008, as recited in the previous Lyden complaint Case No. 3:10-cv-1249-BR, **Exhibit 7**, on pages 11-12. In this regard, the knitted shoe upper component was a key part of the Lyden's plans to make customizable shoes on demand and to bring footwear manufacturing back to the United States.

110. Accordingly, it is not the case that individuals working in research and development at adidas were the first to spontaneously and independently come up with the knitted footwear upper concept behind the so-called Primeknit shoe "about three years ago" as represented in the Portland Business Journal article, **Exhibit 10**.

111. Again, Lyden had previously entered into an "Intellectual Property and Prototype Agreement" with Nike, Inc. on March 4, 2002, a copy being attached hereto as **Exhibit 11**. In accordance with the terms of the Agreement, Lyden disclosed his Patent Application serial no. 10/279,626 which contained information on knitted uppers and later matured as U.S. 7,107,235 to Nike, Inc. shortly after it was filed on October 24, 2002. In this regard, Lyden's patents and patent applications were provided to Nike, Inc. between March and October, 2002 on a non-confidential basis, thus the information was in effect published. Accordingly, the Lyden patents and patent applications would then constitute relevant prior art regarding any later filed patent applications of Nike, Inc. or the adidas Defendants which could be directed to like subject matter.

112. Once again, on December 10, 2002, Lyden was informed that Nike, Inc. was not interested in purchasing or licensing his intellectual property. However, several years later Lyden discovered that Nike, Inc. had actually filed a patent application directed to the same subject matter a week later on December 18, 2002 which later matured as U.S. 6,931,762, as well as other patents directed to knitted shoe uppers.

113. Aware of Nike, Inc.'s many later filed and conflicting patent applications, Lyden has maintained a priority claim to his earlier parent patent applications, and was granted U.S. 8,209,883 with Claims 1-42 directed to certain knitted upper structures on July 3, 2012.

114. Given Lyden's awareness of the numerous later filed patents by Nike, Inc. directed to the subject of knitted shoe uppers, he attempted to warn adidas about their existence. Further, given the fact that adidas does not have any pending or issued patents relating to the company's Primeknit competitive response to Nike, Inc.'s Flyknit athletic shoe, Lyden felt that it could be in the mutual interest of adidas and himself to enter into a business relationship. Accordingly, Lyden offered to sell or license his relevant footwear patents to adidas in May, 2012.

115. Apparently unwilling to enter into a business agreement and/or afraid of the possibility that Lyden might sue adidas over the Primeknit shoe, which is something he had not threatened to do, the adidas Defendants responded by filing on August 21, 2012 and sending to Lyden by U.S. mail a copy of an *Inter Partes* request for a reexamination of his U.S. 8,209,883, and this legal action was sponsored by adidas AG and not adidas America, Inc., as shown on page 2 of **Exhibit 35**, provided herewith.

116. Lyden submitted pending Claims 1-41 in his Appeal Brief in the pending reexamination of U.S. 8,209,883 on June 30, 2014, as shown in the attached **Exhibit 84**, provided herewith.

117. As Lyden had predicted and warned adidas, Nike, Inc. filed a patent lawsuit against adidas over the Primeknit shoe and was granted a preliminary injunction by a German court on September 24, 2012, but the decision was later reversed. At this time, the present status of the Nike, Inc. v. adidas AG case is unknown to the Plaintiff.

118. In response to Nike, Inc.'s lawsuit over the Primeknit shoe in Germany, adidas filed for a *Inter Partes* reexamination of Nike, Inc.'s U.S. 7,347,011 by Dua et al. in the United States, that is, in addition to the present ongoing *Inter Partes* reexamination of Lyden's U.S. 8,209,883.

119. The adidas sponsored reexamination of Nike's U.S. 7,347,011 by Dua et al. resulted in the Dua et al. patent being invalidated by the Patent Trial And Appeal Board in the final written decision on April 28, 2014, and this can be seen by reviewing the case which is identified as IPR 2013-00067 filed on November 29, 2012.

120. With the Nike, Inc. patent by Dua et al. out of the way, the adidas Defendants did not wait for the outcome of the pending reexamination of Lyden's U.S. 8,209,883, but instead offered and began to sell the adizero Primeknit Boost athletic shoe here in Portland, Oregon sometime between July 13, 2014 and August 1, 2014. In this regard, adidas's adizero Primeknit Boost can be seen on their website: www.adidas.com by searching for "adizero Primeknit Boost," and an image of the shoe is provided below:



121. On August 1, 2013, adidas began to sell the Springblade shoe in the United States, and information on the Springblade shoe appeared on the www.adidas.com website, as shown in the attached **Exhibit 12**, provided herewith.

122. A lateral side view image of the adidas Springblade shoe is provided below:



123. The significance of adidas' commercialization of the Springblade shoe has been widely discussed in the news media, e.g., "Springblade Is adidas' Single Most Important Running Shoe," by Daren Heitner, www.forbes.com, July 29, 2013, attached hereto as **Exhibit 13**. In this article, Mr. Peveto who is the Director of Running for adidas is quoted as saying:

"It is the single most important thing we've done."

...
 "We are relying on these shoes beyond just the financials. It is important because every single employee will know what our platform and future is. It gives us a sense of purpose, a future: we don't have to worry what the next thing will be. We have our thing and that's energy running."

...
 "3 out of every 10 pairs of shoes sold are running shoes...it is the cash cow for the industry as far as reach and depth."

...
 "Unlike other categories that are very icon driven, we don't have that same formula in running. What drives the running business is innovation—what you uniquely bring to runner has a benefit."

124. However, as discussed above certain innovative footwear structures associated with the adidas Springblade shoe had been previously disclosed to the adidas Defendants by Lyden, and several other individuals who had acted on his behalf including former adidas America, Inc. President Peter Moore, and Mikal Peveto between 2005-2010. In this regard, the information that was disclosed to adidas included, but was not limited to: the pending patent application which matured as U.S. 7,770,306; the pending patent application which matured as U.S. 7,752,775; U.S. 6,449,878 (**Exhibit 2**); D507,094 (**Exhibit 15**); images consistent with Trademark Registration No. 3,629,011 (**Exhibit 3**); images consistent with Trademark Registration No. 3,633,365 (**Exhibit 4**);

images of two Springshoe point of purchase displays made by Lyden which are attached hereto as **Exhibit 18**; images of many Springshoe concept drawings, prototypes, shoes, and various components which are attached hereto as **Exhibit 20**; an earlier version of the business plan written by Lyden for his small business start-up company Q Branch, Inc. similar to the one dated October 21, 2010 which is provided and attached hereto as **Exhibit 21**; three Springshoe ads that were created by Peveto on Lyden's behalf prior to his becoming the Director of Running for adidas, which are attached hereto as **Exhibit 22**; and the presentation material made by Peveto shown in attached **Exhibits 79 and 80**, provided herewith.

125. On August 27, 2013, Lyden sent an e-mail to the adidas Defendants' legal counsel Stephen Feldman who had been opposing co-counsel in the previous Case No. 3:10-cv-1249-BR, and also David Cornwell who is the attorney of record handling adidas AG's *Inter Partes* reexamination of his U.S. 8,209,883 relating to knitted shoe uppers, and then provided the adidas Defendants with notice regarding the adidas Springblade and/or adidas Prime Boost shoes infringement of his Trademark Registration No. 3,633,365, Claims 1-4, U.S. 6,449,883 (Claims 27-30), Claim 7, U.S. 8,209,883, Claim 8, U.S. D507,094, Claim 9, as shown in the attached **Exhibit 85**, provided herewith.

126. The adidas Defendants have been put on notice regarding Lyden's intellectual property and their infringement of his intellectual property including U.S. 6,449,878 (**Exhibit 2**), Trademark Registration Nos. 3,629,011, **Exhibit 3**, and 3,633,365, **Exhibit 4**, U.S. D507,094 (**Exhibit 15**), U.S. 8,209,883, **Exhibit 16**, and U.S. 8,959,797, **Exhibit 49**, which has been and continues to be a willful.

127. On information and belief, the adidas Defendants' former legal counsel Tim Behean, adidas AG general counsel Frank Dassler, and adidas America, Inc. general counsel Paul Ehrlich are not licensed or registered patent and trademark attorneys of the United States and so they were not competent to render legal opinion regarding infringement of Lyden's U.S. 6,449,878, **Exhibit 2**, U.S. D507,094, **Exhibit 15**, U.S. 8,209,883, **Exhibit 16**, Trademark Registration No. 3,629,011, **Exhibit 3**, Trademark Registration No. 3,633,365, **Exhibit 4**, and U.S. 8,959,797, **Exhibit 49**. On information and belief, the aforementioned legal counsel would have need to rely on the opinion of Stephen Feldman of the firm Perkins Coie located in Portland, Oregon who serves as legal counsel on matters relating to trademarks for adidas in the United States, as well as other outside legal counsel.

128. A brief overview of the adidas Defendants' conduct regarding Lyden's intellectual property between 2004-2015 is provided in this paragraph in order to show the continuing harm done to Lyden's business efforts. The adidas Defendants began infringing Lyden's U.S. 6,243,880 for athletic shorts, but settled the matter out of court in September, 2004. Between 2005-2010, adidas willfully infringed upon Lyden's U.S. 6,601,042, U.S. 7,016,86, U.S. 7,107,235, and U.S. 7,752,775, but then refused to purchase or license Lyden's patents. When the adidas Defendants became completely unresponsive, Lyden filed case no. 3:10-cv-1249-BR in this Court on October 12, 2010. Lyden and adidas' legal representatives later negotiated a settlement out of court, and the case was dismissed on October 19, 2011. However, given the lead time associated with the development of commercial products, the adidas Defendants were then already busy with making preparations for the *next* infringement of Lyden's intellectual property

rights in connection with the Springblade shoe that was launched in August, 2013. In this regard, the adidas Springblade shoe is believed to infringe upon Lyden's U.S. 6,449,878, U.S. D507,094, U.S. 8,959,797, but also his Trademark Registration No. 3,629,011 for a spring element in the rearfoot area of footwear, and Trademark Registration No. 3,633,365 for a heel counter and spring element in the rearfoot area of footwear (the "Springshoe Marks"). Moreover, the adidas Defendants began selling the adizero Prime Boost in the United States on or before August 1, 2014 which is believed to infringe upon Lyden's U.S. 8,209,883. Accordingly, this comes to a grand total of nine patent and two trademark infringements by the adidas Defendants regarding Lyden's intellectual property over the past decade. On information and belief, the willful and repeated predatory actions of the adidas Defendants constitutes a pattern of activity and the company has infringed upon Lyden's intellectual property as a way of doing business.

129. On December 22, 2014, the opposing counsel send Lyden a copy of the Petition for Cancellation filed by the adidas Defendants on December 22, 2014, which is attached as **Exhibit 87**, provided herewith.

130. On December 31, 2014, Lyden was e-mailed a communication including a schedule from the USPTO regarding the Petition for Cancellation filed by the adidas Defendants on December 22, 2015 which is attached as **Exhibit 88**, provided herewith.

131. On February 3, 2015, Lyden filed an answer with the USPTO regarding the Defendants' Petition for Cancellation of the trademarks at issue which is attached as **Exhibit 89**, provided herewith. Lyden's answer states his belief that the adidas Defendants failed to conduct due diligence, and also came to the USPTO with unclean hands when filing for the Petition for Cancellation.

132. Lyden's business efforts relating to the footwear and sporting goods industry between 1998 – Present have been continuous. As discussed above in paragraph 59, Mikal Peveto who is now an employee of adidas AG was present in the room in 2003 when Lyden pitched his Springshoe sample including the Nike, Inc. SHOX R4 shoe upper shown in his trademark application associated with Trademark Serial No. 76459378, and other shoe samples to Jon Epstein at Fila, Inc. in New York, and Peveto also knew about Lyden's successful sales pitch to Bob Butler at Foot Locker, Inc. Further, Peveto was later present when Lyden pitched a like shoe sample along with others to Tom Raynor of Fleet Feet in Portland, Oregon. In addition, Peveto had pitched some of Lyden's shoe samples, promotional documents and things to numerous individuals who were potential investors, but also to existing members of the footwear industry including to the adidas Defendants between 2008-2010. On information and belief, the legal counsel for the adidas Defendants know what their Director of Running Mikal Peveto is in a position to tell them on this subject regarding Lyden's business efforts being genuine and continuous.

133. The adidas Defendants also know on the basis of their own interactions and communication with Lyden that he has offered to sell or license his intellectual property to the adidas Defendants at least once each and every year over at least the last five year period, and also earlier this year as shown in his e-mail of January 29, 2015 to the opposing counsel which has been provided to this Court under seal.

134. However, Lyden's business efforts have been tainted as if by poison by the adidas Defendants' substantially continuous willful infringement of one or more of his patents and/or trademarks over the past eleven years. In this regard, the recent

infringing actions of Nike, Inc. have only made a bad situation worse. As a result, Lyden has been unable to sell or license his intellectual property, or obtain investment for his business start-up over the past eight year period 2007- Present. Even relatively large footwear and apparel companies have been discouraged by the actions of Nike, Inc. and the adidas Defendants.

135. On November 13, 2013, Kevin Culley of Under Armour sent an e-mail to Lyden indicating that the company would delay serious consideration of his intellectual property because of his litigation with Nike, Inc., as shown in attached **Exhibit 90**, provided herewith.

136. On March 10, 2014, Lyden shipped four boxes of Springshoes and related things to Deckers Outdoor Corporation, Inc. as shown in attached FEDEX shipping receipt, **Exhibit 91**, provided herewith, and Lyden subsequently visited Goleta, California and pitched his Springshoes and intellectual property to the company.

137. However, Deckers Outdoor Corporation, Inc. also passed on Lyden's intellectual property. On January 4, 2015, Stuart Jenkins, who is the Senior Vice President of Innovation and Product Development at Deckers Outdoor Corporation, Inc., sent Lyden a personal e-mail discussing his belief that companies in the footwear industry are presently unwilling to purchase or license Lyden's intellectual property and/or hire him as a regular employee because of Lyden's litigations with Nike, Inc. and the adidas Defendants as shown in attached **Exhibit 92**, provided herewith.

138. In this regard, Lyden has approached numerous companies in the footwear industry over the past decade including but not limited to Asics, the adidas Defendants, Armani, Brooks, Columbia, Deckers, Ecco, Fila, Hi-Tec, K-Swiss, Li-Ning, Mizuno,

Nike, New Balance, Pearl Izumi, Saucony, and Under Armour, but because the adidas Defendants and Nike, Inc. are the two giants of the athletic footwear industry and together *de facto* form an oligopoly and enjoy over 65% of worldwide sales in athletic footwear, and have unfortunately both chosen to make their brand statement products infringing upon Lyden's intellectual property, the other smaller members of the footwear industry are afraid to purchase and/or take a license from Lyden in order to legitimately make and sell like competitive products.

139. The adidas Defendants have also mischaracterized and defamed Lyden in their Motion filed December 22, 2014, (ECF No. 24) which stated: "Lyden is a self-proclaimed "designer, inventor, [and] engineer," who repeatedly applies to register various patent and trademark rights in order to sue companies like adidas, Nike, and Riedell in hopes of obtaining a windfall." Further, the adidas Defendants defamed Lyden again in their Motion, filed January 29, 2015, (ECF No. 44), in which he was also referred to as an "extortionist."

140. However, the fact is that most of the patents and trademarks at issue in this case were filed or have relevant parents that were filed in 2002 when Lyden was engaged in an "Intellectual Property and Prototype Agreement" with Nike, Inc. which is now thirteen years ago. Accordingly, it is ridiculous for the adidas Defendants to hold that Lyden could have anticipated the numerous later willful infringing actions of the adidas Defendants many years in the future. Moreover, Lyden has other business interests outside of the footwear industry, as demonstrated by the copy of U.S. 8,957,301 granted February 17, 2015, attached as **Exhibit 81**, provided herewith, and also his resume.

141. Moreover, the record in this case shows that Lyden has repeatedly asked the adidas Defendants for what both parties know to be a reasonable royalty rate for their infringement of his numerous patents and trademarks.

142. Lyden was blessed with loving parents, and was the eldest of a family of five children. He began working for the local rectory and church as a janitor and cutting the lawn when he was 12 years old. He also had a paper route when 13 years old. Lyden began working in a grocery store at age 16 earning \$1.62 / hour, and continued to work in the same store under three different owners for over 10 years in order to pay for his high school and college education. As a distance runner in college he sometimes logged between 100-138 miles /week over a three month period, and would then run 6 miles to work, complete a 5-9 hour shift, and then run at least 9 miles home in order to maintain the requisite average of at least 15 miles / day. As discussed in paragraph 41, Lyden designed and built his home working nights and weekends between 1993-1996, **Exhibit 45**, and later helped his son restore and sell a 1970 Lotus Europa in order to teach him about cars, as shown in attached **Exhibit 93**, provided herewith. Lyden has done most of the work in filing and prosecuting his patents some of which include hundreds of pages of text and drawing figures as shown in the attached U.S. 8,959,797, **Exhibit 49**. Accordingly, Lyden is no stranger to hard work.

143. However, because of the adidas Defendant's substantially continuous infringement of one or more of nine patents and two trademarks over the past 11 years, and despite his valuable innovations in the field of athletic footwear, Lyden has not been able to sell or license his intellectual property from 2008 – Present. Moreover, Lyden has not been able to secure investors, or even obtain regular employment in the footwear

industry as shown in attached **Exhibit 92**, provided herewith, and he is now representing himself *pro se* in this case.

144. Lyden has worked hard for what he has earned and been granted, and it is both inaccurate and improper for the adidas Defendants to publicly defame him simply because they have repeatedly willfully infringed upon his intellectual property as a predatory method of doing business, and then harmed his efforts to provide for his family.

TRADEMARK INFRINGEMENT

145. Plaintiff realleges and incorporates all of the factual allegations of the preceding paragraphs 1-144.

146. For over a decade, Lyden has made, sold, and also promoted footwear bearing his own Federal Trademark Registration No. 3,629,011 for a spring element in the rearfoot area of footwear, and also Trademark Registration No. 3,633,365 for a heel counter and spring element in the rearfoot area of footwear (the "Springshoe Marks").

147. Lyden has also offered his intellectual property relating to footwear and including the Springshoe Marks for licensing or sale to existing companies in the footwear industry, and including the adidas Defendants.

148. The fact of Lyden Springshoe sales and the many and continuous efforts of Lyden to sell his Springshoes bearing the Springshoe Marks to other footwear companies and retail accounts and to the general public constitutes commercial use, and it also demonstrates a continued intent to use the Springshoe Marks. In addition, Lyden's efforts to sell or license the Springshoe Marks themselves to the adidas Defendants and

other members of the footwear industry is also believed to constitute a commercial use of the trademarks.

149. The adidas Defendants have acted as spoilers, and after infringing upon one or more of Lyden's patents and/or trademarks substantially continuously for the last eleven years and then causing substantial harm to his business efforts, the adidas Defendants have attempted to vilify and "blame the victim."

150. Most of the patents and trademarks at issue in the present Amended Complaint were either filed or relate to parent applications that were filed by Lyden when he was engaged in an "Intellectual Property and Prototype Agreement" with Nike, Inc. some thirteen years ago in 2002. Accordingly, it is ridiculous for the adidas Defendants to suggest that Lyden filed his patents and trademarks because he was "targeting" them sometime in the indefinite future. Moreover, it is callous and reprehensible for the adidas Defendants to attempt to play the would-be "victim" with regards to their willful infringement of nine Lyden patents and two trademarks over the past eleven years.

151. It would be a miscarriage of justice under the circumstances for the trademarks at issue to be held unenforceable because of the interference and substantial harm which has been caused to Lyden's business efforts by the adidas Defendants.

152. Lyden has on more than on occasion been informed by adidas' former in-house legal counsel Behean that the company does not have an interest in his intellectual property, and has instead adopted a policy to generate innovation inside of the company rather than to license or purchase outside inventions. Lyden has no issue with adidas having such a policy. However, the *actual* conduct and *pattern* of adidas over the past

decade has been to repeatedly knock off Lyden's patents and/or trademarks, and to infringe as a predatory method of doing business.

153. In blatant disregard and in despite adidas' knowledge of Lyden's rights in the Springshoe Marks, adidas is designing, sourcing, manufacturing, importing, distributing, marketing, promoting, offering for sale, and selling through its own website www.adidas.com and retail stores, but also via other third party Retail Defendants, e.g., The Finish Line, Inc., Foot Locker, Inc. and Dick's Sporting Goods, Inc., the infringing Springblade footwear which include confusingly similar imitations of Lyden's Springshoe Marks. An image of the adidas Springblade has been provided above on page 34, and the aforementioned Lyden Springshoe Marks are shown on pages 47 and 48 below, and also attached as **Exhibits 3 and 4**.

154. Defendants' footwear is not manufactured by Lyden, nor are Defendants connected, affiliated, or associated with, or authorized by Lyden in any way. Defendants' merchandise is likely to cause consumer confusion, deceive the public regarding its source, and tarnish the distinctive quality of Lyden's Springshoe Marks.

155. Accordingly, this is an action at law and in equity for trademark infringement, unfair competition, and unfair business practices, arising under the Trademark Act of 1946, 15 U.S.C. §§ 1051 *et seq.* (2009) ("Lanham Act"); the unfair business practices and unfair and deceptive trade practices acts of several states; and the common law.

156. At least as early as 2002, Lyden began using the Springshoe Marks on footwear made and sold in the United States. The Springshoe Marks are associated with the source, quality and reputation of Lyden's footwear. In this regard, a newspaper article entitled "If The Shoe Fits," by Dave Fitzpatrick published by the Willamette Week on November 24, 2004 showing Lyden holding an article of footwear incorporating a

Springshoe Mark is attached as **Exhibit 5**, provided herewith. Lyden's work on Springshoe footwear was also featured in the article entitled, "Dressed for Innovation," in the Portland Business Journal, on February 11, 2005, which includes a photo showing a point of purchase display with several Springshoes, attached as **Exhibit 6**, provided herewith. Further, Lyden's business efforts were discussed in the article "Flyknit Patents Challenged In Lawsuit, USPTO Action" which appeared in Sports Goods Intelligence on January 10, 2014, which is attached as **Exhibit 94**, provided herewith.

157. On information and belief, there are no articles of footwear for sale in the United States that can even *remotely* be held to resemble the Springshoes and Springshoe Marks of Lyden with the exception of the infringing Springblade shoes of the adidas Defendants.

158. Lyden is the owner of Federal Trademark Registration No. 3,629,011 issued by the USPTO on May 26, 2009 for a spring element in the rearfoot area of footwear depicted below covering articles of footwear, and a copy of the Certificate of Registration for this mark is attached as **Exhibit 3**, provided herewith.

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 3,629,011
Registered May 26, 2009

TRADEMARK
SUPPLEMENTAL REGISTER



LYDEN, ROBERT M. (UNITED STATES INDIVIDUAL)
18261 S.W. FALLATTIN LOOP
ALOHA, OR 97007

FOR: FOOTWEAR, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 12-31-2002; IN COMMERCE 12-31-2002.

THE MARK CONSISTS OF A HEEL COUNTER AND SPRING ELEMENT IN THE REARFOOT AREA OF FOOTWEAR.

SER. NO. 77-000000, FILED P.R. 06-02-09 AM, S.R. 3-25-09.

SUNG IN, EXAMINING ATTORNEY

159. Lyden is also the owner of Federal Trademark Registration No. 3,633,365 issued by the USPTO on June 2, 2009 for a heel counter and spring element in the rearfoot area of footwear covering articles of footwear, and a copy of the Certificate of Registration for this mark is attached as **Exhibit 4**.

Int. Cl.: 25

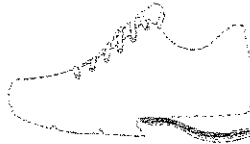
Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 3,633,365

Registered June 2, 2009

TRADEMARK
SUPPLEMENTAL REGISTER



LYDEN, ROBERT M. (UNITED STATES INDIVIDUAL)
13281 S.W. FALLATAIN LOOP
ALOHA, OR 97007

FOR: FOOTWEAR, IN CLASS 25 (U.S. CLS. 22 AND 39)

FIRST USE 12-31-2002; IN COMMERCE 12-31-2002

THE MARK CONSISTS OF A SPRING ELEMENT IN THE REARFOOT AREA OF FOOTWEAR.

SER. NO. 77-310,929, FILED P.R. 10-23-2007; AM. S.R. 4-27-2009.

SUNG IN. EXAMINING ATTORNEY

160. Lyden has offered to license and sell his intellectual property relating to the sporting goods industry and including the Springshoe Marks to the adidas Defendants and other companies in the footwear industry numerous times over the last decade, and including earlier this year.

161. Accordingly, Lyden's Springshoe Marks have been known to the adidas Defendants, as well as other companies doing business in the footwear industry, and members of the general public for many years.

162. The Springshoe Marks are nonfunctional, and members of the public and footwear industry recognize and understand that the Springshoe Marks distinguish and identify Lyden's merchandise. Indeed, the media coverage provided in the article entitled "Dressed for Innovation" published in the Portland Business Journal, February 11, 2005,

attached as **Exhibit 6**, provided herewith, referred to Lyden's Springshoe on the second page of the article with the bolded highline: "Unique look could help sell new products."

The article quoted Peter Moore, the former President of adidas America, Inc. who stated:

"One thing about Rob's shoes is that they have a unique look.
It may or may not be fashionable, but at least its different."

The same article also quoted E.C. ("Ned") Frederick who was the first lab director for Nike, Inc. and who also served as an expert witness for the adidas defendants in the recent reexamination of Nike, Inc.'s U.S. 7,347,011 by Dua et al., who stated:

"Lyden's shoes are dramatically different...
They look different, feel different."

163. As a result of Lyden's use, promotion, and offering for sale of the Springshoe Marks, Lyden has built up and now owns valuable goodwill that is symbolized by the mark. In this regard, members of the footwear industry and the public have come to associate the Springshoe Marks with Lyden.

164. The adidas Defendants were familiar with Lyden's Springshoe Marks when adidas began designing, manufacturing, sourcing, importing, distributing, marketing, promoting, offering for sale, and/or selling the Springshoe footwear identified in this Amended Complaint. On further information and belief, the adidas Defendants intentionally adopted and used confusingly similar imitations of the Springshoe Marks knowing that they would mislead and deceive others into believing that the infringing footwear was produced, authorized, or licensed by Lyden who is known by members of the footwear industry and public to hold numerous Springshoe Patents and related Springshoe Marks. Accordingly, the Defendants have obtained and will continue to enjoy a "scarecrow" free-rider advantage in the competitive marketplace at the expense

of Lyden's prior inventive efforts and the time and expense he has invested in obtaining his intellectual property portfolio including the relevant Springshoe Patents and Springshoe Marks. Obviously, this is not how the patent and trademark systems, and body of laws for protecting intellectual property is supposed to work in the United States.

165. The infringing Springblade footwear designed, manufactured, sourced, imported, distributed, marketed, promoted, offered for sale, and/or sold by Defendants is not manufactured by Lyden. Nor are Defendants associated or connected with Lyden, or licensed, authorized, sponsored, endorsed, or approved by Lyden in any way.

166. Lyden used and promoted the Springshoe Marks continuously before the adidas Defendants began designing, manufacturing, sourcing, importing, distributing, marketing, promoting, offering for sale, and/or selling confusingly similar imitations of Lyden's footwear, and also before the other Retail Defendants The Finish Line, Inc., Foot Locker, Inc., and Dick's Sporting Goods, Inc. began distributing, marketing, promoting, offering for sale, and/or selling the adidas Defendants' infringing Springblade footwear.

167. The infringing Springblade footwear sold by Defendants is similar to, and competes with the Springshoe made, sold, and being offered for sale by Lyden, and the parties' products are offered in overlapping channels of trade.

168. Defendants' use, offer for sale, and sale of confusingly similar imitations of Lyden's Springshoe Marks is likely to deceive, confuse, and mislead purchasers and prospective purchasers into believing that the infringing Springblade footwear sold by Defendants is manufactured by, authorized by, or in some manner associated with Lyden, which it is not. The likelihood of confusion, mistake, and deception engendered by Defendants' misappropriation of Lyden's Springshoe Marks is causing irreparable harm to

the goodwill symbolized by the Springshoe Marks and the reputation for quality and related intellectual property protection that they embody.

169. Defendants' activities are likely to cause confusion before, during, and after the time of purchase because purchasers, prospective purchasers, and others viewing the infringing Springblade footwear at the point of sale or on a wearer are likely – due to the use of confusingly similar imitations of the Springshoe Marks – to mistakenly attribute the product to Lyden. This is damaging with respect to those people who perceive a defect or lack of quality in Defendants' products. By causing such a likelihood of confusion, mistake, and deception, Defendants are inflicting irreparable harm on the goodwill symbolized by the Springshoe Marks and the reputation for quality they embody.

170. On information and belief, Defendants continue to use, offer for sale, and sell confusingly similar imitations of Lyden's Springshoe Marks in connection with the sale of footwear that competes with footwear manufactured and sold by Lyden. Defendants began using, offering for sale, and selling the Infringing Footwear well after Lyden had established protectable rights in his Springshoe Marks and well after the Springshoe Marks had become known to members of the footwear industry and public.

171. On information and belief, adidas Defendants knowingly, willfully, intentionally, and maliciously adopted and used confusingly similar imitations of Lyden's Springshoe Marks.

172. On information and belief, the Retail Defendants The Finish Line, Inc., Foot Locker, Inc., and Dick's Sporting Goods, Inc. have and continue to offer for sale and sell confusingly similar imitations of Lyden's Springshoe Marks manufactured by adidas.

FIRST CLAIM FOR RELIEF

(Federal Trademark Infringement)

173. Plaintiff realleges and incorporates all of the factual allegations of the preceding paragraphs 1-172.

174. adidas Defendants are designing, manufacturing, sourcing, importing, distributing, marketing, promoting, offering for sale, and/or selling footwear in interstate commerce bearing confusingly similar imitations of Lyden's Springshoe Marks, and Retail Defendants The Finish Line, Inc., Foot Locker, Inc., and Dick's Sporting Goods, Inc., on information and belief, are distributing, marketing, promoting, offering for sale, and/or selling in interstate commerce adidas Defendants' infringing Springblade footwear bearing confusingly similar imitations of Lyden's Springshoe Marks.

175. Defendants' use, offer for sale, and sale in commerce of confusingly similar imitations of Lyden's Springshoe Marks, as described in this Complaint, is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendants' products are manufactured, produced, distributed, endorsed, sponsored, approved, or licensed by Lyden, or are otherwise associated or connected with Lyden.

176. Defendants have used a mark confusingly similar to Lyden's federally registered Springshoe Marks in violation of 15 U.S.C. § 1114. Defendants' activities have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of members of the trade and public, and, additionally, injury to Lyden's goodwill and reputation as symbolized by the registered Springshoe Marks, for which Lyden has no adequate remedy at law.

177. adidas Defendants' actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Lyden's federally registered Springshoe Marks to Lyden's great and irreparable injury.

178. Defendants have caused and are likely to continue causing substantial injury to the public and to Lyden, and Lyden is entitled to injunctive relief and to recover Defendants' profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1114, 1116, and 1117.

SECOND CLAIM FOR RELIEF

(Federal Unfair Competition)

179. Plaintiff realleges and incorporates all of the factual allegations of the preceding paragraphs 1-178.

180. Defendants' use, offer for sale, and sale of confusingly similar imitations of Lyden's Springshoe Marks, as described in this Complaint, has caused and is likely to cause confusion, deception, and mistake by creating the false and misleading impression that the infringing Springblade footwear is manufactured or distributed by Lyden, is affiliated, connected, or associated with Lyden, or has the sponsorship, endorsement, or approval of Lyden.

181. Defendants have made false representations, false descriptions, and false designations of Defendants' goods in violation of 15 U.S.C. § 1125(a). Defendants' activities have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of members of the trade and public, as well as

injury to Lyden's goodwill and reputation as symbolized by the Lyden Springshoe Marks, for which Lyden has no adequate remedy at law.

182. adidas Defendants' actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Lyden's Springshoe Marks to the great and irreparable injury of Lyden.

183. Defendants' conduct has caused, and is likely to continue causing, substantial injury to the public and to Lyden. Lyden is entitled to injunctive relief and to recover Defendants' profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1125(a), 1116, and 1117.

THIRD CLAIM FOR RELIEF

(Unfair and Deceptive Trade Practices)

184. Plaintiff realleges and incorporates all of the factual allegations of the preceding paragraphs 1-183.

185. adidas Defendants have been, and currently are, passing off Lyden's goods as those of Defendants', causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval of Defendants' goods, causing a likelihood of confusion as to Defendants' affiliation, connection, or association with Lyden, and otherwise damaging Lyden and the consuming public. adidas Defendants' conduct and contribution and inducement of Retail Defendants' conduct constitutes unfair and deceptive acts or practices in the course of a business, trade, or commerce in violation of the unfair and deceptive trade practices statutes of several states, including California, CAL. BUS. & PROF. CODE § 17200, *et seq.* (West 2009); Colorado, COLO. REV. STAT. ANN. §§ 6-1-101 to 6-1-115 (West 2009); Delaware, DEL. CODE ANN. tit. 6, §§ 2531 to 2536 (2009);

Georgia, GA. CODE ANN. §§ 10-1-370 to 10-1-375 (2009); Hawaii, HAW. REV. STAT. §§ 481A-1 to 481A-5 (2009); Illinois, ILL. COMP. STAT. ANN. ch. 815, 510/1 to 510/7 (2009); Maine, ME. REV. STAT. ANN. tit. 10, §§ 1211 to 1216 (West 2009); Minnesota, MINN. STAT. ANN. § 325D.43 to .48 (West 2009); Nebraska, NEB. REV. STAT. §§ 87-301 to 87-306 (2009); New Mexico, N.M. STAT. ANN. §§ 57-12-1 to 57-12-22 (Michie 2009); New York, N.Y. GEN. BUS. Law § 349 (McKinney 2009); Ohio, OHIO REV. CODE ANN. §§ 4165.01 to 4165.04 (Baldwin 2009); and Oklahoma, OKLA. STAT. ANN. tit. 78, §§ 51 to 55 (West 2009).

186. Defendants' unauthorized use, offer for sale, and sale of confusingly similar imitations of Lyden's Springshoe Marks has caused and is likely to cause substantial injury to the public and to Lyden. Lyden is entitled to injunctive relief and to recover damages, and, if appropriate, punitive damages, costs, and reasonable attorneys' fees.

FOURTH CLAIM FOR RELIEF

(Common Law Trademark Infringement and Unfair Competition)

187. Plaintiff realleges and incorporates all of the factual allegations of the preceding paragraphs 1-186.

188. Defendants' acts constitute common law trademark infringement and unfair competition, and have created and will continue to create, unless restrained by this Court, a likelihood of confusion to the irreparable injury of Lyden. Lyden has no adequate remedy at law for this injury.

189. On information and belief, adidas Defendants acted with full knowledge of Lyden's use of, and statutory and common law rights to, the Springshoe Marks, and

without regard to the likelihood of confusion of the public created by adidas Defendants' activities.

190. adidas Defendants' actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Lyden's Springshoe Marks to the great and irreparable injury of Lyden.

191. As a result of Defendants' acts of trademark infringement, Lyden has been damaged in an amount not yet determined or ascertainable. At a minimum, however, Lyden is entitled to injunctive relief, an accounting of Defendants' profits, damages, and costs. Further, in light of the deliberately fraudulent and malicious use of confusingly similar imitations of Lyden's Springshoe Marks, and the need to deter adidas Defendants from engaging in similar conduct in the future, adidas Defendants merit the imposition of punitive damages.

FIFTH AND SIXTH CLAIMS FOR RELIEF

(Federal and State Trademark Dilution)

192. The Fifth Claim For Relief (Federal Trademark Dilution) in the Original Complaint, was dismissed with prejudice by this Court on February 10, 2015.

193. The Sixth Claim For Relief (State Trademark Dilution and Injury to Business Reputation) in the Original Complaint, was dismissed with prejudice by this Court on February 10, 2015.

SEVENTH CLAIM FOR RELIEF

(Patent Infringement of Lyden's U.S. 6,449,878)

194. Plaintiff realleges and incorporates all of the factual allegations of the preceding paragraphs 1-172.

195. On August 1, 2013, Defendants began selling the Springblade shoe in the United States, as shown in the adidas press release entitled “adidas Unleashes Explosive Energy with Springblade,” published on <http://news.adidas.com> on June 24, 2013, attached hereto as **Exhibit 14**, and Lyden purchased a pair of the Springblade shoes at the adidas Village Employee Store located at 5055 N. Greeley Ave., Portland, Oregon 97217 on September 15, 2014, as shown by the receipt, **Exhibit 24**. A lateral side view photo of an adidas Springblade shoe is provided on page 34 above.

196. Lyden is the owner of U.S. Patent 6,449,878 (“the ‘878 patent”) entitled “Article Of Footwear Having A Spring Element And Selectively Removable Components” including allowed Claims 1-30 which issued on September 17, 2000, attached hereto as **Exhibit 2**.

197. Defendants have been and now are directly infringing the ‘878 patent in Oregon, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, importing and /or offering for sale footwear that infringe one or more claims of the ‘878 patent, to the injury of Lyden. adidas has also directly infringed by using their website <http://www.adidas.com> to offer for sale and sell Springblade shoes in Oregon and the United States that are covered by one or more of the Lyden ‘878 patents’ claims. On information and belief, adidas’ website serves adidas America, Inc. here in Oregon and the United States, and also the parent company adidas AG.

198. Lyden owned the ‘878 patent throughout the period of the Defendants’ infringing acts and still owns the patent.

199. As the formal process of discovery has not begun in this case, all of the possibly infringing adidas shoes which have been commercialized and sold in the United States may not be known to Lyden. However, upon information and belief, the adidas Springblade running shoes infringe upon the '878 patent. Several images of the infringing adidas Springblade shoes are disclosed on the <http://www.adidas.com> website, as shown in the attached **Exhibit 12** and **Exhibit 96**, and a lateral side view image is provided above on page 34.

200. adidas Defendants have been and are actively inducing infringement and has contributed to infringement of the Lyden '878 patent by retailers, customers, sponsored teams, promotional athletes, and sales personnel by their making, using, selling, and offering for sale the Springblade shoes. adidas Defendants are thus liable for infringement of the '878 patent pursuant to 35 U.S.C. § 271.

201. On information and belief, the adidas Springblade footwear shown above on page 34 and also in **Exhibits 12** and **96** directly and indirectly infringe (e.g., by contributory and inducement) independent Claim 27, and dependant Claims 28-29 thereto, and also independent Claim 30 of the Lyden '878 patent. In this regard, the adidas Springblade shoe infringes the '878 patent because it includes a superior spring element extending substantially between the posterior and anterior side, and at least one inferior spring element affixed in functional relation thereto and positioned within 50 percent of the length between the posterior and anterior side and projecting rearward and downward therefrom forming a V-shape, and at least one inferior spring element also comprises greater length on its lateral side relative to its medial side and greater

concavity downwards on its medial side than on its lateral side as recited and claimed in independent Claims 27 and 30.

202. As shown in the illustrated Claim Chart provided in attached **Exhibit 82**, provided herewith, Claims 27-30, read on the adidas Springblade footwear.

203. At least after the adidas Defendants have had actual notice of the '878 patent and over Lyden's continued objections, the adidas Defendants have willfully infringed, and knowingly induced infringing acts with the specific intent to induce another's infringement. Adidas Defendants continue to willfully infringe the '878 patent without justification.

204. Defendants have been and now are directly infringing the '878 patent in Oregon, and Defendants' infringement has damaged or impaired the value of the '878 patent.

205. As a result of the Defendants' infringement of the '878 patent, Lyden has suffered monetary damages that are compensable under 35 U.S.C. § 284 in an amount not yet determined but believed to be in excess of 3 million dollars (\$3,000,000.00), and Lyden will continue to suffer such monetary damages in the future unless Defendants' infringing activities are permanently enjoined by this Court.

206. Unless permanent injunctions are issued enjoining Defendants and their agents, servants, employees, representatives, affiliates, and all others acting on their behalf from infringing the '878 patent, Lyden will be greatly and irreparably harmed.

207. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and Lyden is thus entitled to an award of his reasonable attorneys' fees.

EIGHTH CLAIM FOR RELIEF

(Patent Infringement of Lyden's U.S. 8,209,883)

208. Plaintiff realleges and incorporates all of the factual allegations of the preceding paragraphs 1-172.

209. On July 13, 2014, adidas began selling the adizero Primeknit Boost shoe in the United States as shown in news article entitled "adidas adizero US Release Info," published by the <http://www.nicekicks.com> website, **Exhibit 23**, and Lyden purchased a pair at the adidas Village Employee Store located at 5055 N. Greeley Ave., Portland, Oregon 97217 on September 15, 2014, as shown by the receipt, **Exhibit 24**. A lateral side view photo of the adizero Prime Boost athletic shoe is provided on page 34 above, and it is also shown in the provided and attached **Exhibits 23 and 25**.

210. Lyden is the owner of U.S. Patent 8,209,883 ("the '883 patent") entitled "Custom Article of Footwear and Method of Making the Same" including allowed claims 1-42 which issued on July 3, 2012, attached hereto as **Exhibit 16**, and also a brief relevant excerpt is attached hereto for convenience as **Exhibit 19**.

211. The '883 patent is presently the subject of an *Inter Partes* reexamination sponsored by the Defendant adidas AG which is now before the Patent Trial and Appeal Board and the outcome has not been determined.

212. Defendants have been and now are directly infringing the '883 patent in Oregon, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, importing and /or offering for sale footwear that infringe one or more claims of the '883 patent, to the injury of Lyden. adidas Defendants have also directly infringed by using their websites, including <http://www.adidas.com> to offer

for sale and sell adizero Prime Boost shoes in Oregon and the United States that are covered by one or more of the Lyden '883 patents' claims. On information and belief, adidas' websites serve adidas America, Inc. here in Oregon and the United States, and also the parent company adidas AG.

213. Lyden owned the '883 patent throughout the period of the Defendants' infringing acts and still owns the patent.

214. As the formal process of discovery has not begun in this case, all of the possibly infringing adidas shoes which have been commercialized and sold in the United States may not be known to Lyden. However, upon information and belief, the adidas adizero Prime Boost running shoes infringe upon the '883 patent, and several images of the shoes are disclosed on the <http://www.adidas.com> website, but also above on page 34, and in the attached **Exhibits 23** and **25**.

215. adidas Defendants have been and are actively inducing infringement and have contributed to infringement of the Lyden '883 patent by retailers, customers, sponsored teams, promotional athletes, and sales personnel by their making, using, selling, and offering for sale the adizero Prime Boost shoes. adidas Defendants are thus liable for infringement of the '883 patent pursuant to 35 U.S.C. § 271.

216. On information and belief, the adizero Prime Boost shown above on page 34, and in the attached **Exhibits 23** and **25**, and presently being sold by the Defendants directly and indirectly infringes (e.g., by contributory and inducement) original independent Claims 1, and dependent Claims 2-5, 7-9, 11, 14-15, 17-19, 24-32, 34-35, and 37-40, but also independent Claim 42 of the Lyden '883 patent. In this regard, the adizero Prime Boost infringes the '883 patent because the shoe includes a knitted upper

having tip, vamp, dorsal, collar, quarter and posterior sections as recited in independent Claims 1 and 42, and these sections also comprise “different knit textile structure having different elongation characteristics” as defined in independent Claim 1, or “different knit textile structure having different mechanical properties” as recited in Claim 42.

217. At least after adidas Defendants have had actual notice of the ‘883 patent and over Lyden’s continued objections, adidas Defendants have willfully infringed, and knowingly induced infringing acts with the specific intent to induce another’s infringement. adidas Defendants continue to willfully infringe the ‘883 patent without justification.

218. Defendants have been and now are directly infringing the ‘883 patent in Oregon, Defendants’ infringement has damaged or impaired the value of the ‘883 patent.

219. As a result of the Defendants’ infringement of the ‘883 patent, Lyden has suffered monetary damages that are compensable under 35 U.S.C. § 284 in an amount not yet determined, and Lyden will continue to suffer such monetary damages in the future unless Defendants’ infringing activities are permanently enjoined by this Court.

220. Unless permanent injunctions are issued enjoining Defendants and their agents, servants, employees, representatives, affiliates, and all others acting on its behalf from infringing the ‘883 patent, Lyden will be greatly and irreparably harmed.

221. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and Lyden is thus entitled to an award of his reasonable attorneys’ fees.

NINTH CLAIM FOR RELIEF

(Patent Infringement of Lyden's U.S. D507,094)

222. Plaintiff realleges and incorporates all of the factual allegations of the preceding paragraphs 1-172.

223. On August 1, 2013, Defendants began selling the adidas Springblade shoe in the United States, as shown in the adidas press release entitled "adidas Unleashes Explosive Energy with Springblade," published on <http://news.adidas.com> on June 24, 2013, attached hereto as **Exhibit 14**, and Lyden purchased a pair of the Springblade shoes at the adidas Village Employee Store located at 5055 N. Greeley Ave., Portland, Oregon 97217 on September 15, 2014, as shown by the receipt, **Exhibit 24**. A lateral side view photo of the adidas Springblade shoe is provided on page 34 above.

224. Lyden is the owner of U.S. Design Patent D507,094 S ("the '094 patent") entitled "Spring Element For An Article Of Footwear" which issued on July 12, 2005, attached hereto as **Exhibit 15**.

225. Defendants have been and now are directly infringing the '094 patent in Oregon, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, importing and /or offering for sale footwear having designs that infringe the '094 patent, to the injury of Lyden. Further, adidas has directly infringed by using its retail stores and website <http://www.adidas.com> to offer for sale and sell Springblade shoes in Oregon and the United States. On information and belief, the adidas' website serves adidas America, Inc. here in Oregon and the United States, and also the parent company adidas AG.

226. Lyden owned the '094 patent throughout the period of the Defendants' infringing acts and still owns the patent.

227. As the formal process of discovery has not begun in this case, all of the possibly infringing adidas shoes which have been commercialized and sold in the United States may not be known to Lyden. However, upon information and belief, the adidas Springblade running shoe design infringes upon the '094 patent. Several images of the infringing adidas Springblade shoes are disclosed on the <http://www.adidas.com> website, as shown in the attached **Exhibit 12**, and a lateral side view is shown above on page 34. The attention of this Court is also respectfully directed to the attached **Exhibit 96**, provided herewith, which shows the most recent alternative embodiment of the adidas Springblade called the "Springblade Ignite" which has appeared since the original complaint was filed on October 8, 2014. The adidas Springblade Ignite shoe shown in **Exhibit 96** may be compared with the Springshoe sample that was made by Lyden using a Nike, Inc. SHOX R4 upper in 2002, as shown in attached **Exhibit 58**, provided herewith. Accordingly, the adidas Defendants are not making an effort to design around or avoid willful infringement of the Lyden patents and trademarks which are recited and at issue in this Amended Complaint.

Provided below is drawing Figure 6 of U.S. D507,094 which shows a curved spring element design which may be compared with at least one curved spring element of the adidas Springblade product. In particular, the asymmetric design of the rear spring element of the infringing adidas Springblade can be compared side by side with drawing Figure 9 of U.S. D507,094, as shown below:

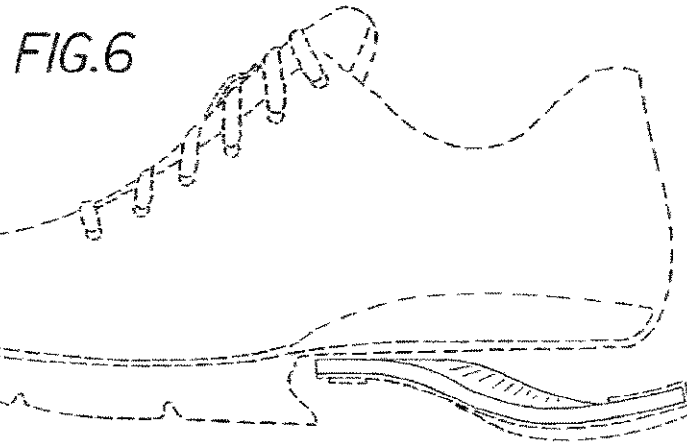
Drawing Figure 6

U.S. Patent

Jul. 12, 2005

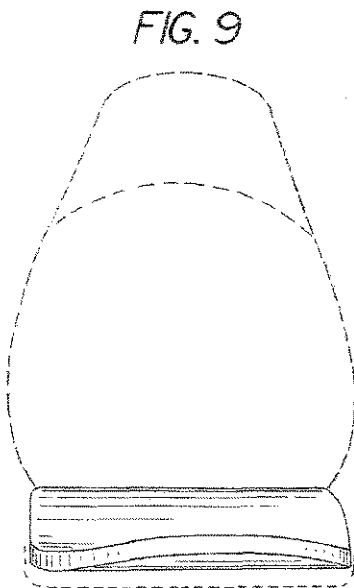
Sheet 3 of 7

US D507,094 S



Drawing Figure 9

adidas Springblade



228. adidas Defendants have been and are actively inducing infringement and have contributed to infringement of the Lyden '094 patent by retailers, customers, sponsored teams, promotional athletes, and sales personnel by their making, using, selling, and offering for sale the Springblade shoes. adidas Defendants are thus liable for infringement of the '094 patent pursuant to 35 U.S.C. § 271.

229. At least after the adidas Defendants have had actual notice of the '094 patent and over Lyden's continued objections, the adidas Defendants have willfully infringed, and knowingly induced infringing acts with the specific intent to induce another's infringement. Adidas Defendants continue to willfully infringe the '094 patent without justification.

230. Defendants have been and now are directly infringing the '094 patent in Oregon, and Defendants' infringement has damaged or impaired the value of the '094 patent.

231. As a result of the Defendants' infringement of the '094 patent, Lyden has suffered monetary damages that are compensable under 35 U.S.C. § 284 in an amount not yet determined but believed to be in excess of 3 million dollars (\$3,000,000.00), and Lyden will continue to suffer such monetary damages in the future unless Defendants' infringing activities are permanently enjoined by this Court.

232. Unless permanent injunctions are issued enjoining Defendants and their agents, servants, employees, representatives, affiliates, and all others acting on their behalf from infringing the '094 patent, Lyden will be greatly and irreparably harmed.

233. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and Lyden is thus entitled to an award of his reasonable attorneys' fees.

TENTH CLAIM FOR RELIEF

(Patent Infringement of Lyden's U.S. 8,959,797)

234. Plaintiff realleges and incorporates all of the factual allegations of the preceding paragraphs 1-172.

235. On August 1, 2013, Defendants began selling the Springblade shoe in the United States, as shown in the adidas press release entitled "adidas Unleashes Explosive Energy with Springblade," published on <http://news.adidas.com> on June 24, 2013, attached hereto as **Exhibit 14**, and Lyden purchased a pair of the Springblade shoes at the adidas Village Employee Store located at 5055 N. Greeley Ave., Portland, Oregon 97217 on September 15, 2014, as shown by the receipt, **Exhibit 24**. A lateral side view photo of an adidas Springblade shoe is provided on page 34 above.

236. Lyden is the owner of U.S. Patent 8,959,797 ("797 Patent") entitled "Article Of Footwear Having A Spring Element And Selectively Removable Components" including allowed Claims 1-20 which issued on February 24, 2015, attached hereto as **Exhibit 49**.

237. Defendants have been and now are directly infringing the '797 patent in Oregon, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, importing and /or offering for sale footwear that infringe one or more claims of the '797 patent, to the injury of Lyden. adidas has also directly infringed by using their website <http://www.adidas.com> to offer for sale and sell Springblade shoes in Oregon and the United States that are covered by one or more

of the Lyden '797 patents' claims. On information and belief, adidas' website serves adidas America, Inc. here in Oregon and the United States, and also the parent company adidas AG.

238. Lyden owned the '797 patent throughout the period of the Defendants' infringing acts and still owns the patent.

239. As the formal process of discovery has not begun in this case, all of the possibly infringing adidas shoes which have been commercialized and sold in the United States may not be known to Lyden. However, upon information and belief, the adidas Springblade running shoes infringe upon the '797 patent. Several images of the infringing adidas Springblade shoes are disclosed on the <http://www.adidas.com> website, as shown in the attached **Exhibit 12** and **Exhibit 96**, and a lateral side view image is provided above on page 34.

240. adidas Defendants have been and are actively inducing infringement and has contributed to infringement of the Lyden '797 patent by retailers including by not limited to the named retail Defendants, customers, sponsored teams, promotional athletes, and sales personnel by their making, using, selling, and offering for sale the Springblade shoes. adidas Defendants are thus liable for infringement of the '797 patent pursuant to 35 U.S.C. § 271.

241. On information and belief, the adidas Springblade footwear shown above on page 34 and also in **Exhibit 12** and **Exhibit 96**, directly and indirectly infringe (e.g., by contributory and inducement) independent Claims 1-2, and also independent Claim 3 and dependant Claims 4-16, and 18-20 thereto of the Lyden '797 patent because each element recited in the indicated claims read on the adidas Springblade. Attached as

Exhibit 95, provided herewith, is an illustrated Claim Chart which maps the adidas

Springblade's infringement of independent Claim 3 of U.S. 8,959,797, and for the sake of convenience, the entire text of Claim 3 is provided below:

3. An article of footwear comprising an anterior side, a posterior side, a medial side, a lateral side, a superior side, an inferior side, a rearfoot area, a midfoot area, a forefoot area, an upper comprising a bottom side, a heel counter, and a spring element, said spring element comprising a superior spring element comprising a plurality of inferior spring elements projecting downwardly and rearwardly from said superior spring element, said superior spring element extending substantially between said anterior side and said posterior side of said article of footwear and being affixed to said upper, said plurality of inferior spring elements each comprising an anteriormost side, a posteriormost side, a medialmost side, a lateralmost side, an anterior tangent point, a top surface comprising a top curved configuration, a bottom surface comprising a bottom curved configuration and an inferiormost point and a geometric shape, said plurality of inferior spring elements comprising a first inferior spring element located on said medial side and being positioned across from at least one other of said plurality of inferior spring elements comprising a second inferior spring element located on said lateral side and being at least partially separated by a void space located therebetween, said first inferior spring element and said second inferior spring element each being configured to provide a vertical elevation of at least 10 mm between said anterior tangent point and said inferiormost point and each of said first inferior spring element and said second inferior spring element being located in at least one of said midfoot area and said rearfoot area, said midfoot area and said rearfoot area therefore both being elevated and capable of deflection, said first inferior spring element located on said medial side comprising a first top surface comprising a first top curved configuration and a first bottom surface comprising a first geometric shape, and said second inferior spring element located on said lateral side comprising a second top surface comprising a second top curved configuration and a second bottom surface comprising a second geometric shape, said first top curved configuration of said first inferior spring element being similar to said second top curved configuration of said second inferior spring element, and said first geometric shape of said first inferior spring element being different and asymmetric relative to said second geometric shape of said second inferior spring element.

242. At least after the adidas Defendants have had actual notice of the ‘797 patent and over Lyden’s continued objections, the adidas Defendants have willfully infringed, and knowingly induced infringing acts with the specific intent to induce another’s infringement. The adidas Defendants continue to willfully infringe the ‘797 patent without justification.

243. Defendants have been and now are directly infringing the ‘797 patent in Oregon, and Defendants’ infringement has damaged or impaired the value of the ‘797 patent.

244. As a result of the Defendants’ infringement of the ‘797 patent, Lyden has suffered monetary damages that are compensable under 35 U.S.C. § 284 in an amount not yet determined but believed to be in excess of 3 million dollars (\$3,000,000.00), and Lyden will continue to suffer such monetary damages in the future unless Defendants’ infringing activities are permanently enjoined by this Court.

245. Unless permanent injunctions are issued enjoining Defendants and their agents, servants, employees, representatives, affiliates, and all others acting on their behalf from infringing the ‘797 patent, Lyden will be greatly and irreparably harmed.

246. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and Lyden is thus entitled to an award of his reasonable attorneys’ fees.

PRAYER FOR RELIEF

WHEREFORE, Lyden prays that regarding Defendants' Trademark Infringement of the Lyden's Springshoe Marks:

1. Defendants and all of their respective agents, officers, employees, representatives, successors, assigns, attorneys, and all other persons acting for, with, by, through, or under authority from Defendants, or in concert or participation with Defendants, and each of them, be enjoined preliminarily and permanently, from:
 - a. using, offering for sale, or selling, Lyden's Springshoe Marks or any other copy, reproduction, colorable imitation, or simulation of Lyden's Springshoe Marks on or in connection with Defendants' products;
 - b. using, offering for sale, or selling, any trademark, logo, design, or source designation of any kind on, or in connection with, Defendants' goods that is a copy, reproduction, colorable imitation, or simulation of, or confusingly similar to Lyden's Springshoe Marks;
 - c. using, offering for sale, or selling, any trademark, logo, design, or source designation of any kind on or in connection with Defendants' goods that is likely to cause confusion, mistake, deception, or public misunderstanding that such goods are produced or provided by Lyden, are sponsored or authorized by Lyden, or are in any way connected or related to Lyden; and,
 - d. passing off, palming off, or assisting in passing off or palming off Defendants' goods as those of Lyden, or otherwise continuing any and all acts of unfair competition as alleged in this Complaint;

2. Defendants be ordered to cease offering for sale, marketing, promoting, and selling, to remove from retail stores, and to recall and retrieve all products bearing

Lyden's Springshoe Marks or any other confusingly similar variation, which are in Defendants' possession or have been shipped by Defendants or under their authority, to any store or customer, including, but not limited to, any wholesaler, distributor, distribution center, retail store, consignor, or marketer, and also to deliver to each such store or customer a copy of this Court's order as it relates to said injunctive relief against Defendants;

3. Defendants be ordered to deliver up for impoundment and for destruction, all footwear, bags, boxes, labels, tags, signs, packages, receptacles, advertising, sample books, promotional material, stationary, or other materials in the possession, custody, or under the control of Defendants that are found to adopt, use, infringe, any of Lyden's Springshoe Marks, or that otherwise unfairly compete with Lyden and Lyden's products;

4. Defendants be compelled to account to Lyden for any and all profits derived by Defendants from the sale or distribution of infringing goods as described in this Complaint;

5. Lyden be awarded all damages caused by the acts forming the basis of this Complaint;

6. Based on adidas Defendants' knowing and intentional use and sale of confusingly similar imitations of Lyden's Springshoe Marks, the damages awarded be trebled and the award of adidas Defendants' profits be enhanced as provided for by 15 U.S.C. § 1117(a) and (b);

7. Defendants be required to pay to Lyden the costs and reasonable attorneys' fees incurred by Lyden in this action pursuant to 15 U.S.C. § 1117(a) and the state statutes cited in this Complaint;

8. Based on adidas Defendants' willful and deliberate infringement of Lyden's marks, and to deter such conduct in the future, Lyden be awarded punitive damages;

9. Defendants be required to pay prejudgment and post-judgment interest on the damages and profits awards; and

10. Lyden have such other and further relief as the Court may deem just.

WHEREFORE, Lyden prays that regarding Defendants' Patent Infringement of the Lyden's U.S. 6,449,878:

11. A judgment declaring that Defendants' have infringed one or more claims of the '878 patent literally and/or under the doctrine of equivalents;

12. A judgment declaring that adidas Defendants have willfully infringed one or more claims of the '878 patent literally and/or under the doctrine of equivalents;

13. A preliminary and/or permanent injunction prohibiting Defendants and their officers, directors, employees, agents, affiliates, divisions, branches, subsidiaries, and all others acting in concert with Defendants or on its behalf from further infringing the '878 patent;

14. An award to Lyden of damages to compensate for Defendants' past and present acts of infringement of the '878 patent, including costs, and prejudgment and post-judgment interest;

15. An award to Lyden of enhanced damages due to adidas Defendants' willful infringement of the '878 patent as provided under 35 U.S.C. § 284;

16. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Lyden his reasonable attorneys' fees; and,

17. For any other and further relief as the Court may deem just and proper under the circumstances.

WHEREFORE, Lyden prays that regarding Defendants' Patent Infringement of the Lyden's U.S. 8,209,883:

18. A judgment declaring that Defendants' have infringed one or more claims of the '883 patent literally and/or under the doctrine of equivalents;

19. A judgment declaring that adidas Defendants have willfully infringed one or more claims of the '883 patent literally and/or under the doctrine of equivalents;

20. A preliminary and/or permanent injunction prohibiting Defendants and their officers, directors, employees, agents, affiliates, divisions, branches, subsidiaries, and all others acting in concert with Defendants or on its behalf from further infringing the '883 patent;

21. An award to Lyden of damages to compensate for Defendants' past and present acts of infringement of the '883 patent, including costs, and prejudgment and post-judgment interest;

22. An award to Lyden of enhanced damages due to adidas Defendants' willful infringement of the '883 patent as provided under 35 U.S.C. § 284;

23. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Lyden his reasonable attorneys' fees; and,

24. For any other and further relief as the Court may deem just and proper under the circumstances.

WHEREFORE, Lyden prays that regarding Defendants' Patent Infringement of Lyden's design patent U.S. D507,094:

25. A judgment declaring that Defendants' have infringed the Lyden '094 patent in violation of 35 U.S.C. § 271(a);

26. A judgment declaring that adidas Defendants have willfully infringed the Lyden '094 patent in violation of 35 U.S.C. § 271(a);

27. A preliminary and/or permanent injunction prohibiting Defendants and their officers, directors, employees, agents, affiliates, divisions, branches, subsidiaries, and all others acting in concert with Defendants or on its behalf from further infringing the '094 patent;

28. An award to Lyden of damages to compensate for Defendants' past and present acts of infringement of the '094 patent, including costs, and prejudgment and post-judgment interest;

29. An award of damages adequate to compensate Lyden for the patent infringement that has occurred pursuant to 35 U.S.C. § 284, which shall be trebled as a result of the adidas Defendants' willful patent infringement, or an award of Defendant's profits from its infringement pursuant to 35 U.S.C. § 289, which is greater, together with prejudgment interest and costs;

30. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Lyden his reasonable attorneys' fees; and,

31. For any other and further relief as the Court may deem just and proper under the circumstances.

WHEREFORE, Lyden prays that regarding Defendants' Patent Infringement of the Lyden's U.S. 8,959,797:

32. A judgment declaring that Defendants' have infringed one or more claims of the '797 patent literally and/or under the doctrine of equivalents;

33. A judgment declaring that adidas Defendants have willfully infringed one or more claims of the '797 patent literally and/or under the doctrine of equivalents;

34. A preliminary and/or permanent injunction prohibiting Defendants and their officers, directors, employees, agents, affiliates, divisions, branches, subsidiaries, and all others acting in concert with Defendants or on its behalf from further infringing the '797 patent;

35. An award to Lyden of damages to compensate for Defendants' past and present acts of infringement of the '797 patent, including costs, and prejudgment and post-judgment interest;

36. An award to Lyden of enhanced damages due to adidas Defendants' willful infringement of the '797 patent as provided under 35 U.S.C. § 284;

37. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Lyden his reasonable attorneys' fees; and,

38. For any other and further relief as the Court may deem just and proper under the circumstances.


JURY TRIAL DEMAND

Plaintiff Robert M. Lyden respectfully requests a trial by jury of any and all issues so triable that are raised herein or which hereinafter may be raised in this action.

DATED: February 27, 2015

Respectfully Submitted,

By:


Robert M. Lyden
18261 S.W. Fallatin Loop
Aloha, OR 97007
robertlyden@comcast.net
(971) 219-1200

CERTIFICATE OF SERVICE

I hereby certify that I have made service of the foregoing Plaintiff's "**AMENDED COMPLAINT FOR TRADEMARK AND PATENT INFRINGEMENT**" and its supporting attached **EXHIBITS 1-96** by sending a true and correct copy of same in the following manner on the date set forth below:

☐ U.S. regular mail, first class postage prepaid;

☐ Hand Delivery;

☐ Facsimile;

☐ Express and/or overnight service;

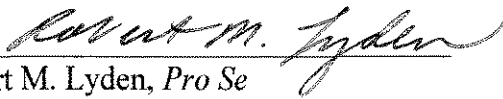
☐ email;

☒ notice of electronic filing using the CM/ECF system.

to the person listed below and addressed as follows:

Charlie Henn
Kilpatrick Townsend & Stockton, LLP
1100 Peachtree Street NE, Suite 2800
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Dated: February 27, 2015

By 
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