**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

ORTHOSIE SYSTEMS, LLC,
 	
    Plaintiff,
 	
    v.
 	
ACTSOFT, INC.;
 	
    Defendant.
	CIVIL ACTION NO.: 4:16-cv-873
	
	JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

1.   Orthosie Systems, LLC ("Orthosie" or "Plaintiff") files this second amended complaint for patent infringement, in which Orthosie makes the following allegations against Actsoft, Inc. ("Actsoft" or "Defendant").

PARTIES

2.   Plaintiff Orthosie Systems, LLC is a Texas limited liability company with a principal place of business at 1333 W. McDermott Drive, Suite 200, Allen, Texas 75013. Plaintiff's president is Daniel F. Perez.

3.   On information and belief, Actsoft is a Florida company having a principal place of business at 10006 N. Dale Mabry Hwy., Suite 100, Tampa, FL 33618. Actsoft's Registered Agent for service of process in Florida is Fee & Jefferies, P.A., 1227 Franklin Street, Tampa, FL 33602. Actsoft does not appear to have a Registered Agent for service of process in Texas.

JURISDICTION AND VENUE

4.   This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5.   Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). Plaintiff's principal place of business is within this district. On information and belief, Defendant has transacted business in this district, and has committed acts of patent infringement in this district.

6.   On information and belief, Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to their substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) 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 Texas and in this Judicial District.

7.   On information and belief, Defendant has transacted or conducted business within the Eastern District of Texas.

8.   On information and belief, Defendant has transacted or conducted business with a business in Dilboll, Texas, known as Arbor Resources.

9.   On information and belief, Defendant has conducted business with or within Kaufman County.

10.   On information and belief, users, customers, clients and/or subscribers of Defendant are operating infringing systems within the Eastern District of Texas.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 7,430,471

11.   Plaintiff is the owner by assignment of the valid and enforceable United States Patent No. 7,430,471 ("the '471 Patent") entitled "Method and System for Monitoring a Vehicle" – including all rights to recover for past and future acts of infringement. The '471 Patent issued on September 30, 2008. A true and correct copy of the '471 Patent is attached as Exhibit A.

12.   Upon information and belief, and reserving Plaintiff's rights under P.R.3 to fully and completely disclose which claims of the '471 Patent Plaintiff intends to assert at a later date, Defendant's accused instrumentalities infringe claims 1-9, 12-23, and 26-28 of the '471 Patent.

13.   Upon information and belief, the Defendant makes, had made, produces, provided, used, operated, supplies, supplied, distributes, or distributed the "mComet" application.

14.   Upon information and belief, the mComet application is designed and produced to be installed on a mobile communication device, and must be installed on a mobile communication device to be operable.

15.   Upon information and belief, the mComet application causes a mobile communication device to transmit and receive data via server computers owned, operated, controlled or maintained by Defendant, or for Defendant's exclusive use ("Actsoft Servers").

16.   Upon information and belief, the mComet application causes a mobile communication device to exchange data with one or more of Defendant's tracking or management applications via Actsoft Servers.

17.   Upon information and belief, the mComet application commands operative control of a mobile communication device's GPS and telecommunication systems – sending and receiving command and data signals to and from those systems.

18.   Upon information and belief, the mComet application requires a mobile communication device user to enter identification or login credentials through the mComet application in order to access that application's operational user interface.

19.   Upon information and belief, the mComet application – while operational – causes a mobile communication device to function as a tracking device ("Tracking Device"), for use by and in connection to one or more of Defendant's tracking or management applications.

20.   Upon information and belief, the Defendant makes, had made, produces, provided, used, operated, supplies, supplied, distributes, distributed, offered for sale, sold, offered for subscription, licenses, licensed, or otherwise charges money for use of or access to the "Comet Tracker", "Comet EZ", "Comet Driver Log", "Comet Suite", and "mComet Manager" tracking and management applications ("Tracking Software").

21.   Upon information and belief, the "Comet Tracker" and "Comet EZ" applications are accessed – via an Actsoft Server – on a desktop computing device, laptop computing device, tablet computing device, or other mobile computing device ("Computing Device") – rendering the device a management platform under the control of Actsoft ("Management Platform").

22.   Upon information and belief, the "Comet Tracker" and "Comet EZ" applications are provided in a Software as a Service ("SaaS") format.

23.   Upon information and belief, the "Comet Tracker" and "Comet EZ" applications cause a Computing Device to transmit and receive data via Actsoft Servers.

24.   Upon information and belief, once an end-user purchases or otherwise pays for access to Tracking Software, an account is established within Actsoft Servers for that end-user.

25.   Upon information and belief, the "Comet Tracker" and "Comet EZ" applications require an end-user to enter identification or login credentials, via Actsoft Servers, in order to access account data or use the Tracking Software.

26.   Upon information and belief, the "Comet Tracker" and "Comet EZ" applications require an end-user to access or organize data using menus, fields, and forms preconfigured by Actsoft.

27.   Upon information and belief, the "Comet Tracker" and "Comet EZ" applications prompt an end-user to enter data in a manner predefined by Actsoft, using interactive prompts or instructions communicated to the end-user by the application user interface.

28.   Upon information and belief, the "Comet Tracker" and "Comet EZ" applications prompt an end-user to populate predefined data fields in a manner predefined by Actsoft, using interactive prompts or instructions communicated to the end-user by the application user interface.

29.   Upon information and belief, the "Comet Suite" application is installed on a mobile communication device – rendering the device a management platform under the control of Actsoft ("Management Platform").

30.   Upon information and belief, the "Comet Suite" application causes a mobile communication device to transmit and receive data via Actsoft Servers.

31.   Upon information and belief, the "Comet Suite" application requires a mobile communication device user to enter identification or login credentials through the "Comet Suite" application, via Actsoft Servers, in order to access account data or use the "Comet Suite" application.

32.   Upon information and belief, the "Comet Suite" application commands operative control of a mobile communication device's telecommunication systems – sending and receiving command and data signals to and from those systems.

33.   Upon information and belief, the "Comet Suite" application requires an end-user to access or organize data using menus, fields, and forms preconfigured by Actsoft.

[4]

34.   Upon information and belief, the "Comet Suite" application prompts an end-user to enter data in a manner predefined by Actsoft, using interactive prompts or instructions communicated to the end-user by the application user interface.

35.   Upon information and belief, the "Comet Suite" application prompts an end-user to populate predefined data fields in a manner predefined by Actsoft, using interactive prompts or instructions communicated to the end-user by the application user interface.

36.   Upon information and belief, the "mComet Manager" application is installed on a mobile communication device – rendering the device a management platform under the control of Actsoft ("Management Platform").

37.   Upon information and belief, the "mComet Manager" application causes a mobile communication device to transmit and receive data via Actsoft Servers.

38.   Upon information and belief, the "mComet Manager" application requires a mobile communication device user to enter identification or login credentials through the "mComet Manager" application, via Actsoft Servers, in order to access account data or use the "mComet Manager" application.

39.   Upon information and belief, the "mComet Manager" application commands operative control of a mobile communication device's telecommunication systems – sending and receiving command and data signals to and from those systems.

40.   Upon information and belief, the "mComet Manager" application requires an end-user to access or organize data using menus, fields, and forms preconfigured by Actsoft.

41.   Upon information and belief, the "mComet Manager" application prompts an end-user to enter data in a manner predefined by Actsoft, using interactive prompts or instructions communicated to the end-user by the application user interface.

42.   Upon information and belief, the "mComet Manager" application prompts an end-user to populate predefined data fields in a manner predefined by Actsoft, using interactive prompts or instructions communicated to the end-user by the application user interface.

43.   Upon information and belief, the "Comet Driver Log" application is designed and produced to be installed on a mobile communication device, and must be installed on a mobile communication device to be operable.

44.   Upon information and belief, the "Comet Driver Log" application is also accessible on a desktop computing device, laptop computing device, tablet computing device, or other mobile computing device ("Computing Device") – via Actsoft Servers – rendering the Computing Device a management platform under the control of Actsoft ("Management Platform").

45.   Upon information and belief, the "Comet Driver Log" Management Platform is provided in a Software as a Service ("SaaS") format.

46.   Upon information and belief, the "Comet Driver Log" application – while operational – causes a mobile communication device to function as a tracking device ("Tracking Device"), for use by and in connection to a "Comet Driver Log" Management Platform.

47.   Upon information and belief, the "Comet Driver Log" application causes mobile communication devices and Management Platforms to transmit and receive data via Actsoft Servers.

48.   Upon information and belief, the "Comet Driver Log" application requires a mobile communication device user, or a Management Platform user, to enter identification or login credentials in order to access that application's operational user interface.

49.   Upon information and belief, the "Comet Driver Log" application requires a mobile communication device user, or a Management Platform user, to enter identification or login credentials, via Actsoft Servers, in order to access account data or use the "Comet Driver Log" application.

50.   Upon information and belief, the "Comet Driver Log" application commands operative control of a mobile communication device's telecommunication systems – sending and receiving command and data signals to and from those systems.

51.   Upon information and belief, the "Comet Driver Log" application requires an end-user to access or organize data using menus, fields, and forms preconfigured by Actsoft.

52.   Upon information and belief, the "Comet Driver Log" application prompts an end-user to enter data in a manner predefined by Actsoft, using interactive prompts or instructions communicated to the end-user by the application user interface.

53.   Upon information and belief, the "Comet Driver Log" application prompts an end-user to populate predefined data fields in a manner predefined by Actsoft, using interactive prompts or instructions communicated to the end-user by the application user interface.

54.   Upon information and belief, "mComet", "Comet Tracker", "Comet EZ", "Comet Driver Log", "Comet Suite", and "mComet Manager" are applications, software, or other machine-readable code designed to be loaded onto or accessed by a mobile communications device or a Computing Device.

55.   Upon information and belief, "mComet" is not operable on a mobile communication device unless an end-user has purchased, subscribed or otherwise paid for access to and use of "Comet Tracker", "Comet EZ", "Comet Suite", or "mComet Manager".

56.   Upon information and belief, Actsoft sends, receives and stores data for users of Actsoft's Management Platforms via Actsoft Servers.

57.   Upon information and belief, Actsoft maintains data for a user of Actsoft's Management Platforms on Actsoft Servers using an account number associated with that user.

58.   Upon information and belief, a user of an Actsoft Management Platform in conjunction with an Actsoft Tracking Device: 1) pays Actsoft for access to an Actsoft Tracking Software; 2) is associated with an account number on Actsoft Servers; 3) accesses Actsoft Tracking Software via an Actsoft Server; 4) accesses and enters data in a format predefined by Actsoft; and 5) receives and sends data, via an Actsoft Server, from and to an Actsoft Tracking Device, which is also under the operative control of Actsoft.

59.   Upon information and belief, Actsoft Management Platforms, Actsoft Tracking Software, and Actsoft Tracking devices (collectively, "Actsoft Tracking Systems") are all operated under the direction and control of Actsoft.

60.   Upon information and belief, an Actsoft Tracking Device may be disposed on, in or around an asset – such as a vehicle, a shipping container, a trailer, or piece of equipment.

61.   Upon information and belief, Actsoft's publicly available information indicates that an Actsoft Tracking Device is configured to wirelessly communicate signals indicating movement of an asset to an Actsoft Management Platform via an Actsoft Server, as shown in Figure 1, below.
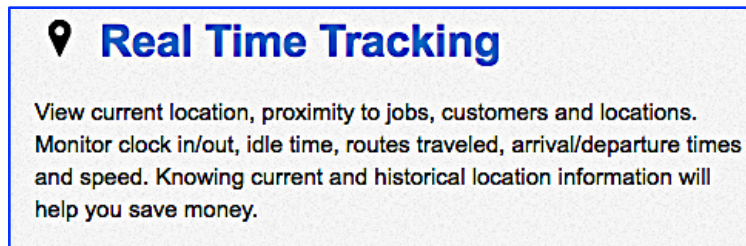
62.   Upon information and belief, Actsoft's publicly available information indicates that an Actsoft Tracking Device is configured to wirelessly communicate signals indicating movement of an asset to an Actsoft Management Platform via an Actsoft Server, as shown in Figure 1, below:

♀ Real Time Tracking

View current location, proximity to jobs, customers and locations. Monitor clock in/out, idle time, routes traveled, arrival/departure times and speed. Knowing current and historical location information will help you save money.

Fig. 1

63.   Upon information and belief, Actsoft's publicly available information indicates that an Actsoft Tracking Device is configured to wirelessly communicate signals indicating idling or stopping of an asset to an Actsoft Management Platform via an Actsoft Server, as shown in Figure 1, above.

64.   Upon information and belief, Actsoft's publicly available information indicates that an Actsoft Tracking Device is configured to wirelessly communicate signals indicating location of an asset to an Actsoft Management Platform via an Actsoft Server, as shown in Figure 1, above.

65.   Upon information and belief, Actsoft's publicly available information indicates that an Actsoft Tracking Device is configured to wirelessly communicate signals indicating speed of an asset to an Actsoft Management Platform via an Actsoft Server, as shown in Figure 1, above.

66.   Upon information and belief, Actsoft's publicly available information indicates that an Actsoft Tracking Device is configured to wirelessly communicate signals indicating operational information of an asset to an Actsoft Management Platform via an Actsoft Server, as shown in Figure 2, below:
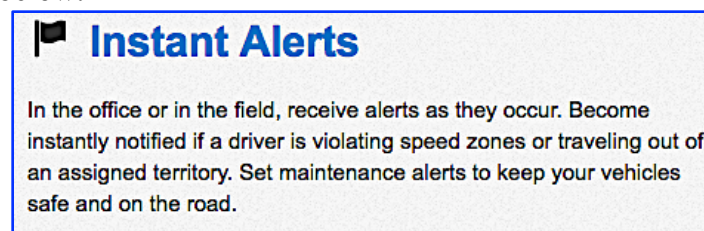
⚑ Instant Alerts

In the office or in the field, receive alerts as they occur. Become instantly notified if a driver is violating speed zones or traveling out of an assigned territory. Set maintenance alerts to keep your vehicles safe and on the road.

Fig. 2

[8]

67.   Upon information and belief, Actsoft's publicly available information indicates that an Actsoft Tracking Device is configured to wirelessly communicate signals identifying an operator of an asset to an Actsoft Management Platform via an Actsoft Server, as shown in Figure 2, above, and Figure 3, below:
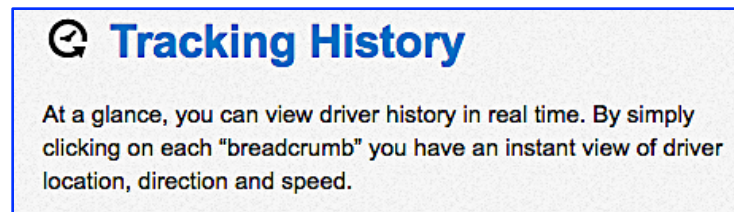

Fig. 3

68.   Upon information and belief, Actsoft's publicly available information indicates that an Actsoft Tracking Device is configured to wirelessly communicate signals characterizing an operator's use or operation of an asset to an Actsoft Management Platform via an Actsoft Server, as shown in Figures 2 and 3, above.

69.   Upon information and belief, Actsoft's publicly available information indicates that an Actsoft Tracking Device is configured to require an operator to provide identification information to an Actsoft Management Platform via an Actsoft Server, as shown in Figure 4, below:
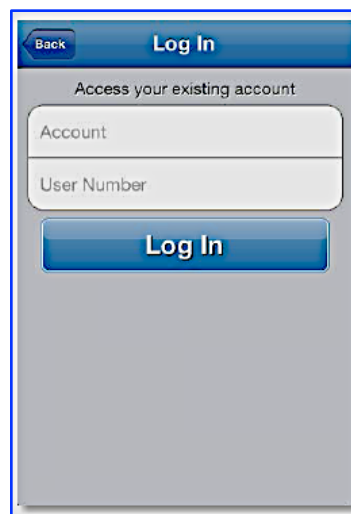

Fig. 4

70.   Upon information and belief, Actsoft's publicly available information indicates that an Actsoft Management Platform is configured to cause an Actsoft Management Platform

user device to receive signals from a Tracking Device via an Actsoft Server, as shown in Figures 1-3, above.

71.   Upon information and belief, Actsoft's publicly available information indicates that an Actsoft Management Platform is configured to cause an Actsoft Management Platform user device to transmit signals to a Tracking Device via an Actsoft Server, as shown in Figure 5, below:
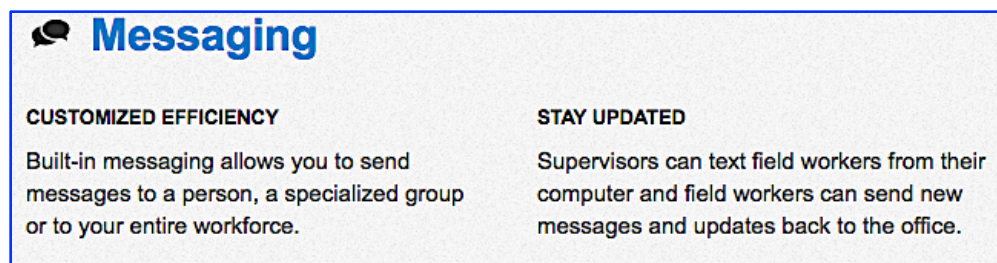

Fig. 5

72.   Upon information and belief, Actsoft's publicly available information indicates that Tracking Software is configured to cause an Actsoft Management Platform user device to receive signals from a Tracking Device indicating movement of an asset via an Actsoft Server, as shown in Figure 1, above.

73.   Upon information and belief, Actsoft's publicly available information indicates that Tracking Software is configured to cause an Actsoft Management Platform user device to receive signals from a Tracking Device indicating location of an asset via an Actsoft Server, as shown in Figure 1, above.

74.   Upon information and belief, Actsoft's publicly available information indicates that Tracking Software is configured to cause an Actsoft Management Platform user device to receive signals from a Tracking Device indicating speed of an asset via an Actsoft Server, as shown in Figure 1, above.

75.   Upon information and belief, Actsoft's publicly available information indicates that Tracking Software is configured to cause an Actsoft Management Platform user device to receive signals from a Tracking Device indicating operational information of an asset via an Actsoft Server, as shown in Figure 2, above.

76.   Upon information and belief, Actsoft's publicly available information indicates that Tracking Software is configured to cause an Actsoft Management Platform user device to receive signals from a Tracking Device identifying an operator of an asset via an Actsoft Server, as shown in Figures 2 and 3, above.

77.   Upon information and belief, Actsoft's publicly available information indicates that Tracking Software is configured to cause an Actsoft Management Platform user device to exchange landmark identification signals with a Tracking Device via an Actsoft Server, as shown in Figure 6, below:

Fig. 6

78.   Upon information and belief, Actsoft's publicly available information indicates that Tracking Software is configured to cause an Actsoft Management Platform user device to exchange alarm condition signals with a Tracking Device via an Actsoft Server, as shown in Figures 2, 5 and 6, above.

79.   Upon information and belief, Actsoft's publicly available information indicates that Tracking Software is configured to cause an Actsoft Management Platform user device to exchange signals with a Tracking Device, indicating location of an asset in relation to a landmark, via an Actsoft Server, as shown in Figure 6, above.

80.   Upon information and belief, Actsoft's publicly available information indicates that Actsoft Tracking Systems – operating on and via Actsoft Servers – cause an Actsoft Management Platform user device to receive signals from a Tracking Device indicating movement of an asset, under the direction and control of Actsoft, as shown in Fig. 1, above.

81.   Upon information and belief, Actsoft's publicly available information indicates that Actsoft Tracking Systems – operating on and via Actsoft Servers – cause an Actsoft Management Platform user device to receive signals from a Tracking Device indicating location of an asset, under the direction and control of Actsoft, as shown in Fig. 1, above.

82.   Upon information and belief, Actsoft's publicly available information indicates that Actsoft Tracking Systems – operating on and via Actsoft Servers – cause an Actsoft Management Platform user device to receive signals from a Tracking Device indicating speed of an asset, under the direction and control of Actsoft, as shown in Fig. 1, above.

83.   Upon information and belief, Actsoft's publicly available information indicates that Actsoft Tracking Systems – operating on and via Actsoft Servers – cause an Actsoft Management Platform user device to receive signals from a Tracking Device indicating operational information of an asset, under the direction and control of Actsoft, as shown in Fig. 2, above.

84.   Upon information and belief, Actsoft's publicly available information indicates that Actsoft Tracking Systems – operating on and via Actsoft Servers – cause an Actsoft Management Platform user device to receive signals from a Tracking Device identifying an operator of an asset, under the direction and control of Actsoft, as shown in Figures 2 and 3, above..

85.   Upon information and belief, Actsoft's publicly available information indicates that Actsoft Tracking Systems – operating on and via Actsoft Servers – cause an Actsoft Management Platform user device to exchange landmark identification signals with Tracking Device, under the direction and control of Actsoft, as shown in Fig. 6, above.

86.   Upon information and belief, Actsoft's publicly available information indicates that Actsoft Tracking Systems – operating on and via Actsoft Servers – cause an Actsoft Management Platform user device to exchange landmark location signals with Tracking, under the direction and control of Actsoft, as shown in Fig. 6, above.

87.   Upon information and belief, Actsoft's publicly available information indicates that Actsoft Tracking Systems – operating on and via Actsoft Servers – cause an Actsoft

[12]

Management Platform user device to exchange alarm condition signals with Tracking Device, under the direction and control of Actsoft, as shown in Figures 2, 5 and 6, above.

88.   Upon information and belief, Actsoft's publicly available information indicates that Actsoft Tracking Systems – operating on and via Actsoft Servers – cause an Actsoft Management Platform user device to exchange signals with Tracking Device, indicating location of an asset in relation to a landmark, under the direction and control of Actsoft, as shown in Figure 6, above.

89.   Upon information and belief, Tracking Software is configured to provide an Actsoft Management Platform user device with a central monitoring or control interface.

90.   Upon information and belief, users, customers, subscribers, or operators of Tracking Devices and Tracking Software are under the direction and control of Actsoft while operating Actsoft Tracking Software and Tracking Devices, via Actsoft Servers.

91.   All steps of the claimed methods in the '471 Patent are performed by an Actsoft Tracking System via an Actsoft Server, under the direction and control of Actsoft.

92.   All steps of the claimed methods in the '471 Patent are attributable to Actsoft by virtue of an Actsoft Tracking System operating on Actsoft Servers, under the direction and control of Actsoft.

93.   Upon information and belief, any Tracking Software may be configured to exchange signals with a Tracking Device via an Actsoft Server.

94.   Upon information and belief, a user may access or operate one Tracking Software in conjunction or cooperation with another Tracking Software.

95.   Upon information and belief, a Tracking Device and Tracking Software, when used or operated in their intended manner, infringe claims 1-9, 12-23, and 26-28 of the '471 Patent, and Defendant is therefore liable for infringement of the '471 Patent.

96.   Defendant has had actual knowledge of its infringement of the '471 Patent at least since January 10, 2017 – the date Defendant was served with Plaintiff's original complaint. All infringing activity since that date has been knowing and willful.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

a.   A judgment in favor of Plaintiff that Defendant has directly or jointly infringed the '471 Patent;

b.   A permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the '471 Patent;

c.   A judgment and order requiring Defendant to pay Plaintiff its damages, costs, expenses, and pre-judgment and post-judgment interest for Defendant's infringement of the '471 Patent as provided under 35 U.S.C. § 284;

d.   An award to Plaintiff for enhanced damages resulting from the knowing and deliberate nature of Defendant's prohibited conduct with notice being made at least as early as January 10, 2017, as provided under 35 U.S.C. § 284;

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

f.   Any and all other relief to which Plaintiff may show itself to be entitled.

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Dated: March 1, 2017

Respectfully Submitted,

ORTHOSIE SYSTEMS, LLC

By: /s/ Ronald W. Burns
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, the foregoing was served on all counsel of record who have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d), all others not deemed to have consented to electronic service will be served with a true and correct copy of the foregoing by email, on this the 1st day of March, 2017.

/s/ Ronald W. Burns
Ronald W. Burns, Esq.

[15]