

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

Verto Medical Solutions, LLC d/b/a Yurbuds,	)	
	)	
Plaintiff,	)	
	)	Case No.
v.	)	
	)	<b>Jury Trial Demanded</b>
Auria, LLC,	)	
	)	
Defendant.	)	

**COMPLAINT**

Plaintiff Verto Medical Solutions, LLC d/b/a Yurbuds (“Yurbuds”), by and through its attorneys, hereby complain against Defendant Auria, LLC (“Auria”) as follows:

**NATURE OF THE SUIT**

1. This case arises from the illegal and unfair acts of Auria in making, offering for sale, and selling ear bud adaptors that infringe Yurbuds’ U.S. Patent No. D618,219.

**THE PARTIES**

2. Plaintiff Verto Medical Solutions, LLC is a Delaware limited liability company with a place of business in this judicial district at 4041 Forest Park Ave., St. Louis, MO 63108. Plaintiff does business as Yurbuds.

3. On information and belief, Defendant Auria, LLC is a Pennsylvania limited liability company with a principal place of business at 5 Great Valley Parkway, Suite 310, Malvern, PA 19355.

4. On information and belief, Auria does business throughout the United States, including within this judicial district.

### **JURISDICTION AND VENUE**

5. This Court has exclusive jurisdiction over the subject matter of Yurbuds' patent infringement claims pursuant to 28 U.S.C. §§1331 and 1338(a), and because this action arises under the patent laws of the United States, 35 U.S.C. §1, *et seq.*

6. On information and belief, Auria directly or through distributors, sales representatives or retail outlets sells its products throughout the United States and in this judicial district.

7. Further, on information and belief, Auria has offered for sale and/or sold at least one product that is at issue in this suit in the State of Missouri and in this judicial district, and has caused injury to Yurbuds in this judicial district.

8. Accordingly, this Court has personal jurisdiction pursuant to, at least, Mo.Rev.Stat. §506.500, which operates to effect "long-arm" jurisdiction over Auria due to its contacts with this judicial district.

9. Venue is proper in this jurisdiction under 28 U.S.C. §§1391 and 1400(b).

### **FACTUAL BACKGROUND**

10. United States Patent No. D618,219 ("the '219 Patent"), entitled "Ear Bud Adaptor", issued on June 22, 2010. A copy of the '219 Patent is attached hereto as Exhibit A.

11. Yurbuds is the owner by assignment of all right, title and interest in the '219 Patent by virtue of an assignment recorded in the U.S. Patent and Trademark Office on May 18, 2010, at Reel 024400, Frame 0148, and has the right to sue for and recover for infringements thereof.

12. The '219 Patent was duly and legally issued, and is valid and enforceable.

13. The '219 Patent claims a novel, ornamental design for an ear bud adapter, as shown in figures 1 through 7 of the '219 Patent.

14. Upon information and belief, Auria is importing, making, using, offering for sale, and/or selling, within the United States and in this judicial district, ear bud adaptors that infringe the '219 Patent. A photograph showing a sample accused infringing product sold by Auria is attached as Exhibit B.

15. On information and belief, Auria used, offered for sale and sold, within this judicial district, ear bud adaptors that infringe the '219 Patent at the Second Annual TASK Rock "n" Roll Marathon event held in St. Louis, Missouri in October 2012.

**COUNT I: PATENT INFRINGEMENT**

16. Yurbuds incorporates by reference paragraphs 1 through 15 as though fully set forth herein.

17. The '219 Patent was duly and legally issued on June 22, 2010, and is valid and enforceable.

18. Auria has infringed, without right, license or permission from Yurbuds, contributorily infringed, and/or induced others to infringe the claim of the '219 Patent by making, using, offering to sell and selling to customers within this judicial district and elsewhere in the United States, or importing into the United States, within the term of the '219 Patent, products that embody the invention of the '219 patent.

19. Auria's actions as described herein constitute infringement of Yurbuds' '219 Patent in violation of 35 U.S.C. § 271, 281-285, *et seq.*

20. On information and belief, these infringing activities have been willful and deliberate and are causing, and will continue to cause, substantial and irreparable damage to Yurbuds, and Auria's actions will continue unless enjoined by this Court.

21. Yurbuds has been damaged by Auria's infringement, contributory infringement and/or inducement of infringement of the '219 Patent and has been and will continue to be irreparably harmed if these infringing activities are not enjoined.

22. Yurbuds does not have an adequate remedy at law for Auria's acts of infringement, contributory infringement, or inducement of infringement.

23. This is an "exceptional case" within the meaning of 35 U.S.C. § 285, and Yurbuds is entitled to an award of reasonable attorneys' fees.

#### **PRAYER FOR RELIEF**

WHEREFORE, Yurbuds prays for judgment:

A. Declaring that Auria has infringed, contributorily infringed and/or induced infringement of U.S. Patent No. D618,219, and these infringing activities have been willful;

B. Preliminarily and permanently enjoining Auria, its subsidiaries, officers, agents, servants and employees, directors, licensees, successors, assigns, and those persons in active concert or participation with any of them, from further infringement, contributory infringement and inducement of infringement of U.S. Patent No. D618,219;

C. Awarding Yurbuds damages adequate to compensate for Yurbuds' losses caused by the wrongful and infringing activities of Auria, together with interest;

D. Awarding Yurbuds treble damages with interest, costs and reasonable attorneys' fees under 35 U.S.C. §§ 284, 285, and other applicable law, by reason of the willful and deliberate nature of Auria's infringement of U.S. Patent No. D618,219; and

E. Awarding Yurbuds such further relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all issues so triable.

Dated: February 28, 2013

Respectfully submitted,

HARNESS, DICKY & PIERCE, P.L.C.

By: /s/ Rudolph A. Telscher

Rudolph A. Telscher, Jr., #8578  
Kara R. Fussner, #503030  
7700 Bonhomme, Suite 400  
St. Louis, Missouri 63105  
(314) 726-7500  
FAX: (314) 726-7501

***Counsel for Plaintiff Verto Medical  
Solutions d/b/a Yurbuds***

61056693.1