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24 **FACET TECHNOLOGIES, LLC.**

25 UNITED STATES DISTRICT COURT  
26 CENTRAL DISTRICT OF CALIFORNIA  
27 WESTERN DIVISION

28 FACET TECHNOLOGIES, LLC,  
Plaintif,  
v.  
LIFESCAN, INC.,  
Defendant.

CASE NO. \_\_\_\_\_

**COMPLAINT FOR PATENT  
INFRINGEMENT AND DEMAND  
FOR JURY TRIAL**

1 Plaintiff Facet Technologies, LLC (“Facet”), by and through its undersigned  
2 counsel, complain and allege against Defendant LifeScan, Inc. (“LifeScan”) as  
3 follows:

4 **NATURE OF THE ACTION / INTRODUCTION**

5 1. This action arises from LifeScan’s unlawful infringement of a patent  
6 owned by Facet, U.S. Patent No. 8,840,635 (the “635 patent,” “Asserted Patent,” or  
7 “Patent-in-Suit”), under the patent laws of the United States, 35 U.S.C. §§ 1 et seq.

8 2. Plaintiff Facet is an innovator of blood glucose monitoring devices. For  
9 decades, it has pioneered the design of lancets and lancing devices (together,  
10 “lancing systems”), which allow diabetic patients to conduct daily blood draws that  
11 are crucial for properly regulating their blood sugar levels. Facet’s focus has been to  
12 safety and minimizing the patient pain. Facet holds patents protecting its important  
13 innovations, including the Asserted Patent.

14 3. Defendant LifeScan is a private equity-backed company also in the  
15 blood glucose monitoring business. LifeScan has been using Facet’s proprietary  
16 technology and is currently, infringing Facet’s Asserted Patent for lancets.  
17 LifeScan’s brand name OneTouch Delica Plus Lancets infringe the Asserted Patent:



24 ***INFRINGING PRODUCT***

25 4. LifeScan is well-acquainted with the Asserted Patent. Facet previously  
26 manufactured these patented lancets for LifeScan, which it marketed for years under  
27 the “Delica” brand name.  
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1           5. In hopes of reaping still more profits, LifeScan chose to undermine the  
2 parties' successful eleven-year commercial relationship. LifeScan secretly conspired  
3 to undermine Facet's financial stability and to commercialize products that  
4 mimicked Facet's patented products that were manufactured by a third party.

5           6. First, LifeScan's then-parent company, Cilag GmbH International  
6 ("Cilag"), demanded that Facet temporarily license to Cilag Facet's patents while  
7 LifeScan purchased the proprietary lancing systems from Facet. Second, Cilag  
8 advanced money to Facet to help fund Facet's manufacture of sufficient quantities  
9 of lancing systems to keep up with high levels of demand from Facet's innovative  
10 lancing systems. Third, on behalf of LifeScan, Cilag renegotiated the commercial  
11 supply deal with Facet, which LifeScan had no intention of honoring. Fourth, Cilag  
12 later insisted that Facet pledge its patents as collateral for the *existing* advance. Facet  
13 would lose its patents if it did not make timely loan payments.

14           7. The final step of LifeScan's scheme was to renege on the recent  
15 commercial supply deal with Facet and to not purchase lancets and lancing devices.  
16 In early 2019, instead of buying the products that it agreed to buy from Facet only  
17 months earlier, LifeScan switched to third-party manufactured "Delica Plus"  
18 products, which intentionally mimicked Facet's patented designs for the Delica  
19 products. Because of the outstanding loan balance (and resulting temporary license),  
20 Facet was unable at that time to stop LifeScan with its patents. If Facet's financial  
21 difficulties were severe enough, Facet would miss a loan payment and it would lose  
22 the very patents that LifeScan was knowingly practicing.

23           8. LifeScan's scheme did not succeed, however. Facet recently repaid the  
24 entire loan, which terminated LifeScan's temporary license. As a result, LifeScan  
25 now must stop its infringement with mimicked "Delica Plus" lancets and must pay  
26 Facet for the improper use of its patented technology.

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**PARTIES**

1  
2 9. Facet is a limited liability company that has one member, Facet  
3 Holdings Corporation, which was formed under the laws of Delaware and has a  
4 principal place of business in Atlanta, Georgia.

5 10. Since 1969, Facet (originally known as Gainer Medical Canada) has  
6 been a medical device company that serves the global diabetes care, wound care,  
7 and drug delivery marketplaces. Today, Facet has its headquarters in Atlanta,  
8 Georgia where it designs, manufactures, and markets various medical devices  
9 throughout the United States and across the globe. Since its founding, Facet has  
10 invested tens of millions of dollars in research and development relating to medical  
11 devices, particularly including products that permit patients with diabetes to protect  
12 their health by frequently and safely testing their blood sugar levels without undue  
13 pain. This investment has led to more than two dozen patents and patent  
14 publications worldwide as well as award-winning lancing systems. Presently, Facet  
15 markets lancets under its “FMT” brand as well as through various private-label  
16 agreements.

17 11. On information and belief, LifeScan is a California corporation  
18 registered to do business in California, does not have a principal place of business  
19 within the State of California, and maintains a registered agent office located at  
20 330 N. Brand Boulevard, Glendale, California, which is within this judicial district.

**JURISDICTION AND VENUE**

21  
22 12. This action arises under the patent laws of the United States, Title 35 of  
23 the United States Code, including in particular 35 U.S.C. § 271.

24 13. This Court has subject matter jurisdiction over the subject matter of this  
25 patent infringement action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

26 14. This Court has personal jurisdiction over LifeScan in this action because  
27 LifeScan resides within the Central District of California and has committed acts  
28

1 within this District giving rise to this action and has established minimum contacts  
2 with the forum such that the exercise of jurisdiction would not offend traditional  
3 notions of fair play and substantial justice. LifeScan is incorporated in California  
4 with a registered agent at 330 N. Brand Boulevard, Glendale, California. On  
5 information and belief, LifeScan directly and through subsidiaries or intermediaries,  
6 has conducted and continues to conduct business in the State of California,  
7 including in the Central District of California. Further, LifeScan, directly and  
8 through affiliates, subsidiaries, agents, or intermediaries (including distributors,  
9 retailers, franchisees, and others) has committed and continue to commit acts of  
10 patent infringement and/or continued to commit acts of patent infringement by  
11 others in this District. As such, LifeScan has purposefully availed itself of the  
12 privilege and conducted business within this District; it has purposefully directed  
13 activities at residents of this State; and at least a portion of the patent infringement  
14 claims alleged herein arise out of or relate to one or more of the foregoing activities.

15 15. For example, LifeScan places the infringing products into the stream of  
16 commerce knowing that they will be sold and used in this State, and economically  
17 benefits from the sale of infringing products in this State. Specifically, LifeScan's  
18 infringing products have been sold and are available for sale in this District at  
19 retailers such as CVS, Rite Aid, and Walgreens, as well as through online retailers  
20 such as Amazon. LifeScan also advertises its infringing products to consumers in  
21 this State and this District through its website.<sup>1</sup>

22 16. Venue is proper in this District under at least 28 U.S.C. §§ 1391(b), (c)  
23 and (d) and 1400(b). LifeScan resides in this District as a California corporation  
24 with a registered agent office located at 330 N. Brand Boulevard, Glendale,  
25 California. LifeScan has committed acts of infringement in this District, directly

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27 <sup>1</sup> See, e.g., [https://www.onetouch.com/products/accessories/onetouch-delica-plus-](https://www.onetouch.com/products/accessories/onetouch-delica-plus-lancing-device)  
28 [lancing-device](https://www.onetouch.com/products/accessories/onetouch-delica-plus-lancing-device).

1 and/or through intermediaries, and/or has transacted business in this District,  
2 including making, using, offering to sell, selling, and/or importing products that  
3 infringe the Asserted Patent, as alleged herein.

## 4 **BACKGROUND**

### 5 **Diabetes**

6 17. Diabetes is a dangerous and life-threatening medical condition that  
7 results when the body does not produce sufficient insulin. As a result, blood sugar  
8 (glucose) levels in patients with diabetes can cause severe health problems, such as  
9 heart attack, stroke, kidney disease, blindness, amputation, and even death.<sup>2</sup>  
10 According to the CDC, “[r]egular blood sugar monitoring” is “the most important  
11 thing” that a patient “can do to manage ... diabetes.”<sup>3</sup>

12 18. Unfortunately, the number of patients with diabetes is growing at an  
13 alarming rate. In 2019, some 28.7 million people in the United States alone were  
14 diagnosed with diabetes.<sup>4</sup> Over 100 million Americans currently suffer from some  
15 form of diabetes requiring daily testing of their blood glucose levels to determine  
16 and maintain a healthy blood sugar level.<sup>5</sup>

17 19. Such testing requires at least one, and up to seven, pinpricks each day  
18 depending on severity of the patient’s disease, medications, and lifestyle. This  
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21 <sup>2</sup> Center for Disease Control and Prevention, Monitoring Your Blood Sugar,  
22 CDC.GOV, [https://www.cdc.gov/diabetes/managing/managing-blood-](https://www.cdc.gov/diabetes/managing/managing-blood-sugar/bloodglucosemonitoring.html)  
23 [sugar/bloodglucosemonitoring.html](https://www.cdc.gov/diabetes/managing/managing-blood-sugar/bloodglucosemonitoring.html)

24 <sup>3</sup> *Id.*

25 <sup>4</sup> Center for Disease Control and Prevention, National Diabetes Statistics Report,  
26 2019, CDC.GOV, <https://www.cdc.gov/diabetes/data/statistics-report/index.html>.

27 <sup>5</sup> *Id.* (reporting 37.3 million people with diabetes and 96 million people with  
28 prediabetes).

1 constant use of new sterile lancets results in an ongoing danger of accidental jabs  
2 with used lancets, which the Patent-in-Suit attempts to alleviate.

### 3 **Facet & Its Proprietary Lancets**

4 20. Facet is a small innovative company based in Atlanta, Georgia that  
5 focuses on assisting diabetic patients with their daily blood sugar measurement.  
6 Facet has a forty-nine-year history of medical device development and as recently as  
7 January of 2019 was one of the largest providers of lancets and lancing devices in  
8 the world.

9 21. “Lancets” are tiny pointed medical instruments that allow people to  
10 draw samples of blood for testing to measure their blood sugar levels, which helps  
11 to prevent serious complications from diabetes or pre-diabetes. “Lancing devices”  
12 are medical instruments that inject the lancets and pierce the skin.

13 22. Facet has significant lancets and lancing device design and  
14 manufacturing expertise. Due to that expertise, beginning in 2008, Facet became the  
15 supplier of lancets and lancing devices to major companies, including Abbott  
16 Laboratories, Roche Diagnostics GmbH, Arkray USA, Inc., and LifeScan (which  
17 was at the time a division of Johnson & Johnson [“J&J”]).

18 23. To protect itself from copycat manufacturers and unscrupulous business  
19 partners, when Facet develops proprietary lancets or lancing devices, it invests  
20 heavily in developing a portfolio of patents protecting its inventions, including the  
21 Patent-in-Suit. For example, the Asserted Patent grew out of an effort by Facet in  
22 the mid-to-late 2000s to develop improved lancets and lancing devices that allow  
23 patients to easily, safely, and as painlessly as possible manage their condition.

### 24 **Facet Develops and Patents Lancets That LifeScan Would** 25 **Commercialize Under its OneTouch Delica Brand**

26 24. In 2008, Facet invented a lancet and lancing device that used innovative  
27 designs and technology to shrink the size of the pointed surgical instrument and the  
28



1 depths of the lancet that pierces into the skin, allowing people with diabetes to test  
2 their blood relatively pain-free and with designs for easy and safe insertion and  
3 removal of the lancet. The patented lancet design allowed for easier handling of the  
4 smaller lancets by patients (who have decreased agility due to age or neuropathy, a  
5 condition suffered by up to 50% of patients with diabetes). Decreasing the size of  
6 the lancet results in decreased pain but improving the handleability of the lancets  
7 decreases the possibility of accidental pricks while increasing ease of use.

8 25. On September 23, 2014, the United States Patent and Trademark Office  
9 (“USPTO”) duly and legally issued United States Patent No. 8,840,635, entitled  
10 “Lancets with Improved Coupling Features and Sterility Caps.” The ’635 patent lists  
11 Lauren R. Pusey, Brian M. Collins, Christopher J. Ruf, Nicholas H. Reaves, and  
12 Jonathan W. Sanders as the inventors. Facet is the assignee of all rights, title, and  
13 interest in the ’635 patent. A true and correct copy of the ’635 patent is attached  
14 hereto as **Exhibit A**.

15 26. The ’635 patent provides improved lancet and lancet endcap  
16 configurations allowing for safer exposure of new lancets and disposal of used ones  
17 with easier handling by patients. For example, the ’635 patent discloses a lancet in  
18 combination with a protective sterility cap comprising a primary sheath for initial  
19 embedment of a sharp lancing tip of an unused lancet therein, a secondary sheath for  
20 receiving the sharp lancing tip of a used lancet, and a gripping handle portion  
21 extending between the primary sheath and the secondary sheath, with the primary  
22 sheath attached at a first end of the gripping handle portion and the secondary sheath  
23 attached at a second end of the gripping handle portion when the protective sterility  
24 cap is removed from the lancet. The protective sterility cap comprises at least one  
25 flat display surface for placement of branding indicia wherein the gripping handle  
26 portion comprises a solid body without an open loop. The ’635 patent provides an  
27 improved design over previously known lancets in that it, for example, facilitates  
28



1 ease of insertion and ejection with a lancing device and assists in the safe disposal of  
2 a used lancet.

3 27. Facet is the owner of all right, title, and interest in the Asserted Patent  
4 with full and exclusive right to bring suit to enforce the Asserted Patent, including  
5 the right to recover for any current or past damages and/or royalties up until the  
6 expiration of the Asserted Patent.

7 28. The Asserted Patent is valid and enforceable.

8 29. Beginning in 2008, Facet and LifeScan (through Cilag) entered into a  
9 series of exclusive supply agreements in which LifeScan would sell lancets and  
10 lancing devices patented and manufactured by Facet under the brand named,  
11 “Delica.” While LifeScan retained the trademark rights to that brand name, Facet  
12 retained ownership of the patent rights related to the lancets and lancing devices.  
13 Since 2010, LifeScan has marketed and sold hundreds of millions of dollars’ worth  
14 of lancets and lancing devices under the “Delica” brand name, which were made by  
15 Facet.

16 30. The Delica products were very successful, both from the standpoint of  
17 providing tangible patient benefits and from the standpoint of commercial sales.  
18 Sales increased dramatically year after year as consumers abandoned other lancing  
19 devices in favor of the Delica lancing system. On information and belief, in 2018  
20 alone, LifeScan sold over \$90 million worth of Delica lancets and lancing devices.  
21 LifeScan repeatedly renewed the supply agreement from 2008 through 2019.

22 31. LifeScan also used the success of Facet’s lancing system to promote its  
23 extremely profitable testing strips and glucose measuring devices, creating a  
24 synergistic sales system based on Facet’s safe, painless, and patented lancing  
25 systems. In 2009, J&J recognized the value of Facet’s lancing systems by awarding  
26 Facet its Supplier Achievement Award.

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1           32. Facet’s lancing system was so popular that in about 2012 Facet reached  
2 out to the Japanese company Asahi Polyslider Company, Ltd. (“Asahi”) to help with  
3 the manufacture of portions of the devices to keep up with the growing demand  
4 from LifeScan and other buyers for whom Facet made the lancets and devices.

5           33. In 2016, LifeScan agreed to advance Facet money to provide capital to  
6 make lancets and lancet devices for LifeScan.

7           34. In 2018, when LifeScan and Facet entered into what would become their  
8 last commercial supply agreement, LifeScan insisted that Facet pledge its patents as  
9 security for the two-year old advance; if Facet defaulted on any payment, Facet  
10 would lose its patents. A “Patent Security Agreement” pledged Facet’s patents as  
11 collateral to secure re-payment of the advance, including specifically the Asserted  
12 Patent. The supply agreement also provided a temporary patent license from Facet  
13 until that advance was fully repaid.

14           **LifeScan Conspires with One of Facet’s Manufacturing Partners**

15           35. On information and belief, at around the same time LifeScan entered  
16 into the 2018 commercial supply agreement with Facet, LifeScan secretly conspired  
17 with Asahi to develop an alternative supply for lancets and lancing devices (which  
18 LifeScan ultimately brought to market under the brand name “Delica Plus” to  
19 capitalize on the success and popularity of the Delica product designed and  
20 produced by Facet).

21           36. In 2014, Asahi had already attempted to inject itself into the supply  
22 chain to Facet’s other customers using the skills and expertise in the construction of  
23 the lancing systems it learned from Facet as a contract manufacturer for Facet’s  
24 products. On information and belief, Asahi offered discounts to LifeScan, because  
25 Asahi did not have to bear the cost of product development. LifeScan and Cilag  
26 repeatedly assured Facet that LifeScan was not working with Asahi or others to  
27 freeze Facet out of its own business.

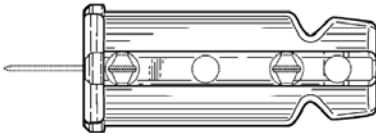

28

1           37. By cutting Facet out of its supply chain, LifeScan reduced its costs and  
 2 padded its already large profits. Although LifeScan was aware that Facet had patents  
 3 protecting its proprietary lancing devices and lancets, LifeScan believed that by  
 4 pulling its supply orders from Facet, Facet either would default on the loan (thus  
 5 permanently lose control of the relevant patents) or would be unable to pay off the  
 6 loan, thereby extending LifeScan’s temporary license to the same patents.





7           38. In March of 2018, J&J agreed to sell LifeScan to Platinum Equity (a  
 8 large private equity firm) for over \$2 billion dollars based on the success of its  
 9 diabetic services, including the sales of Facet’s patented Delica lancets and lancing  
 10 devices. LifeScan and its partners assured Facet that the supply relationship would  
 11 continue after the sale and extended the Delica product supply agreement in  
 12 September of 2018 out to June of 2019 with the promise of a further renewal once  
 13 the sale of LifeScan was completed. But instead, in January of 2019, three months  
 14 after the completion of the sale, LifeScan reneged on the agreement and by June was  
 15 selling its “Delica Plus” copy products manufactured by Asahi.

16           39. LifeScan manufactures, uses, imports, offers for sale, and/or sells lancets  
 17 that incorporate features claimed in the Asserted Patent (“Accused Product”). The  
 18 Accused Product includes, but is not limited to, OneTouch Delica Plus lancets.

19           40. Despite LifeScan’s and Asahi’s purported re-design efforts, the “new”  
 20 Delica Plus products bear numerous striking similarities to the original Facet-  
 21 developed and patented lancet and lancing device products:

	<p style="text-align: center;"><b>FACET ORIGINAL</b></p>	<p style="text-align: center;"><b>LIFESCAN 2018 “RE-DESIGN”</b></p>
<p><b>LANCETS</b></p>	<p style="text-align: center;">   <b><i>U.S. DESIGN PAT. NO. D621,044</i></b> </p>	<p style="text-align: center;">  </p>

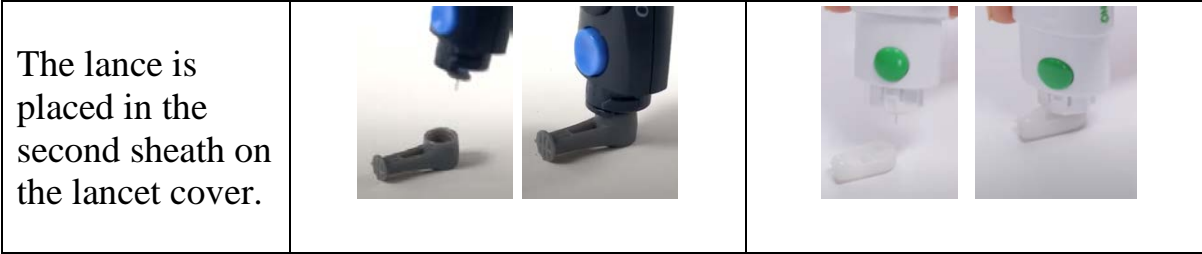
1           41. The lancets are virtually identical and are placed into the lancing devices  
 2 by twisting the caps at the end of the lancing devices to remove the cap and reveal  
 3 the lancet carrier, as detailed in LifeScan’s own marketing materials for these  
 4 products. The lancets are placed in the lancet carriers and the caps of the lancing  
 5 devices, which have holes for the lancets to pass through, are then replaced over the  
 6 lancets.

	<b>FACET ORIGINAL</b>	<b>LIFESCAN 2018 “RE-DESIGN”</b>
9 10 11 Inserting lancet into lancing device.		
12 13 14 Placing the cap back on the lancing device.		

16           42. The Delica and Delica Plus lancets also look almost identical with  
 17 covers with long handles and circular ends. The lancet covers are twisted to remove  
 18 the cover and reveal the lancet. Once the lancet is used, the sharp end is stuck into  
 19 the circular part of the cover so that it is sheathed by a different part of the cover and  
 20 can be disposed of safely.

	<b>FACET ORIGINAL</b>	<b>LIFESCAN 2018 “RE-DESIGN”</b>
23 24 25 Twisting off lancet cover to reveal lancet.		

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43. Shortly after arranging for alternative supply with Asahi, and with the outstanding advance to Facet now in place, LifeScan abruptly and without explanation stopped purchasing Facet’s lancing devices and lancets and refused to enter into any additional supply agreements. LifeScan refused to pay the agreed upon \$2.5 million in pre-payments, only partially paying for January and February of 2019 and refusing to pay for March through June of 2019.

44. The sudden and unexpected shift of business away from Facet, left Facet with tens of thousands of unsold units of the original Delica lancing devices and lancet products that had been previously marketed through LifeScan. This unsold stock and sudden loss of most of its revenue threw Facet into dire financial circumstances that nearly bankrupted the company. To survive, Facet was forced to fire hundreds of long-term employees (approximately 75% of its staff), driving it from a thriving mid-sized company to a struggling small company of around 60 employees, and nearly closing its U.S.-based operations entirely.

45. Of course, these financial difficulties made it very difficult for Facet to service the 2016 loan.

**Facet Recently Paid Off the 2016 Advance,  
Extinguishing LifeScan’s Temporary License**

46. Facet leaned on its significant manufacturing expertise, focused on making its operations more efficient, and developed a novel continuous glucose monitoring device for a different company. The success of those efforts has allowed Facet to avoid defaulting on the 2016 loan and to otherwise regain its commercial footing.

1 47. On January 19, 2022, Facet sent a check to pay off the advance in full,  
2 which automatically terminated any temporary license to LifeScan that might have  
3 had. Despite this payment, LifeScan has not ceased its commercial activities relating  
4 to the Accused Product.

5 **Facet’s Lancets Compete**  
6 **with LifeScan’s Infringing Products**

7 48. Facet makes, offers to sell, and sells its lancets that embody the Asserted  
8 Patent through its own “FMT” brand and through retailers, such as Rite Aid and  
9 Walgreens:



18 49. Facet’s and LifeScan’s products fill a unique niche in the marketplace  
19 by using technology that significantly decreases the level of pain in collecting blood  
20 while significantly increasing patient safety and ease of lancet handling. Facet’s  
21 lancets are sold in competition with LifeScan’s Accused Product. For example,  
22 these products are sold side-by-side in the following retail stores: Walgreens, Rite-  
23 Aid, H-E-B, and Diabetic Promotions.

24 50. On information and belief, other than Facet’s Delica and LifeScan’s  
25 Delica Plus compatible lancets, there is no other lancet available in the U.S. market  
26 for use with LifeScan’s OneTouch Delica Plus lancing devices. While other lancets  
27 are on the market, these lancets simply do not fit inside of the OneTouch Delica Plus  
28

1 lancing devices, while the Delica Plus lancets fit inside the Delica lancing devices  
2 and the Delica lancets fit inside the Delica Plus lancing devices.

3 51. LifeScan advertises that its lancets use a cap that covers the unused  
4 lancet and has a portion at the opposite end of the cap that can receive and cover the  
5 used lancet.<sup>6</sup> LifeScan also advertises that the Delica Plus lancing device uses a  
6 lancet that can be inserted into the lancing device and then ejected from the device  
7 by pushing the slider forward.<sup>7</sup> The OneTouch Delica Plus is advertised as  
8 providing “safe and effective use.”<sup>8</sup>

9 52. LifeScan also advertises that the Delica Plus lancets are compatible with  
10 the original Delica lancing device manufactured by Facet:<sup>9</sup>



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16 53. LifeScan’s Delica Plus lancet embodies, incorporates, or otherwise  
17 practices one or more claims of the ’635 patent. On information and belief, LifeScan  
18 imports, offers for sale, sells, and/or supplies its Delica Plus lancet in this District to  
19 retailers such as CVS, Walgreens, and Rite Aid, and to online retailers such as  
20 Amazon, who in turn sells the products to customers in this District.

21  
22  
23 <sup>6</sup> [https://www.onetouch.com/products/accessories/onetouch-delica-plus-lancing-](https://www.onetouch.com/products/accessories/onetouch-delica-plus-lancing-device)  
24 [device](https://www.onetouch.com/products/accessories/onetouch-delica-plus-lancing-device)

25 <sup>7</sup> *Id.*

26 <sup>8</sup> <https://diabeticoutlet.com/product/onetouch-delica-plus-lancets-100-count/>

27 <sup>9</sup> [https://www.onetouch.com/products/accessories/onetouch-delica-plus-lancing-](https://www.onetouch.com/products/accessories/onetouch-delica-plus-lancing-device)  
28 [device.](https://www.onetouch.com/products/accessories/onetouch-delica-plus-lancing-device)



**COUNT I: INFRINGEMENT OF THE '635 PATENT**

54. Facet re-alleges and incorporates by reference the allegations set forth in all of the preceding paragraphs as if fully set forth herein.

55. In violation of 35 U.S.C. § 271(a), LifeScan has infringed and continues to infringe the '635 patent by making, using, selling, offering to sell, and/or importing into the United States, without authority, the Accused Product, which practice each and every limitation of at least Claims 6, 8, 14, and 18 of the '635 patent. LifeScan has infringed literally and/or under the doctrine of equivalents as outlined below, which is preliminary, based on publicly available information, and non-limiting.

56. By way of example, the Accused Product embody every limitation of and infringe at least Claim 6 of the '635 patent, which depends upon and incorporates Claim 1. The further descriptions below, which are based on publicly available information, are preliminary examples and are not limiting.

57. LifeScan's OneTouch Delica Plus lancets include a protective sterility cap for a lancet:



1           58. The sterility cap has a primary sheath for initial embedment of a sharp  
2 lancing tip of an unused lancet therein as shown in below:



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8  
9

**Primary  
Sheath**

10           59. The sterility cap has a secondary sheath for receiving the sharp lancing  
11 tip of a used lancet:



16  
17  
18

**Secondary  
Sheath**

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20           60. LifeScan’s instructions for using the Delica Plus product<sup>10</sup> direct  
21 patients to as insert the used lancet tip into the secondary sheath:

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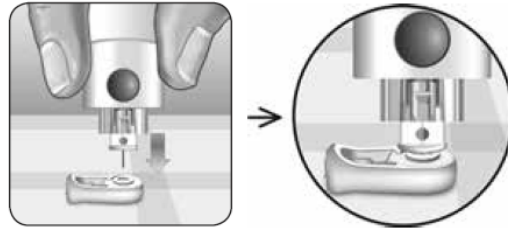
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26 <sup>10</sup> OneTouch® Delica® Plus Instruction Manual,  
27 [https://professional.onetouch.com/sites/onetouch\\_hcp\\_us/files/07173301b\\_otdp\\_ifu](https://professional.onetouch.com/sites/onetouch_hcp_us/files/07173301b_otdp_ifu)  
28 [\\_caus\\_enesfr\\_r2\\_web\\_v1\\_fvid219668.pdf](https://professional.onetouch.com/sites/onetouch_hcp_us/files/07173301b_otdp_ifu_caus_enesfr_r2_web_v1_fvid219668.pdf)

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**2. Cover the exposed lancet tip**

Before removing the lancet, place the lancet protective cover on a hard surface then push the lancet tip into the flat side of the disk.



61. The sterility cap also has a gripping handle portion extending between the primary sheath and the secondary sheath, with the primary sheath attached at the first end of the gripping handle portion and the secondary sheath attached at the second end of the gripping handle portion when the protective sterility cap is removed from the lancet as shown in below:



62. The Delica Plus lancet further provides the protective sterility cap being in combination with a lancet having a lancet body defining a lancet thickness (annotated as "T" below) with sharp lancet tip initially embedded in the primary sheath as shown below:

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63. The gripping handle portion of the Delica Plus lancet defines a lateral span (annotated as “S” above). As depicted above, the lateral span is at least 1.5 times as large as the lancet thickness. In particular, the thickness of the Delica Plus lancets is no more than about 3 millimeters and lateral span of the gripping handle exceeds 4.5 millimeters.

64. The Accused Product also embodies every limitation of and infringes at least Claim 8 of the '635 patent, which depends upon and incorporates Claim 6 as described above and also describes a gripping handle portion defining a length (annotated as “L” below) that is at least equal to the lancet thickness. In particular, the length of the gripping handle portion exceeds about 3 millimeters.



65. The Delica Plus lancets also embody every limitation of and infringe Claims 14 and 18 of the '635 patent which include the limitations already demonstrated as having been met above.

1           66. The Delica Plus lancets embody every limitation of and infringe Claim  
2 14 of the '635 patent. The Accused Product includes the limitations already  
3 demonstrated above in connection with Claim 6.

4           67. The Delica Plus lancets have a protective sterility cap and a lancet  
5 having a lancet body. The sterility cap has a primary sheath for initial embedment of  
6 a sharp lancing tip of an unused lancet and a secondary sheath for receiving the  
7 sharp lancing tip of a used lancet.

8           68. The protective sterility cap of the Delica Plus lancets also has a gripping  
9 handle portion extending between the primary sheath and the secondary sheath, with  
10 the primary sheath attached at a first end of the gripping handle portion and the  
11 secondary sheath attached at a second end of the gripping handle portion when the  
12 protective sterility cap is removed from the lancet.

13           69. The protective sterility cap of the Delica Plus lancets being in  
14 combination with a lancet having a lancet body defining a lancet thickness, and a  
15 sharp lancet tip initially embedded in the primary sheath. The gripping handle  
16 portion defines a lateral span of at least 1.5 times the lancet thickness.

17           70. The Delica Plus product also embodies every limitation of and infringes  
18 Claim 18 of the '635 patent, which depends upon and incorporates Claim 14. It  
19 includes the limitations already demonstrated as having been met above. The Delica  
20 Plus provides the protective sterility cap being in combination with a lancet having a  
21 lancet body defining a lancet thickness with sharp lancet tip initially embedded in  
22 the primary sheath as seen above.

23           71. LifeScan is not licensed or otherwise authorized to practice the claims of  
24 the '635 patent.

25           72. As a result of LifeScan's infringement, Facet is entitled to substantial  
26 monetary damages in an amount adequate to compensate for LifeScan's  
27 infringement, together with interest and costs as fixed by the Court.  
28



**PRAYER FOR RELIEF**

WHEREFORE, Facet respectfully prays for the following relief:

A. a judgment in favor of Facet that LifeScan has infringed, literally and/or under the doctrine of equivalents, one or more claims of the Patent-in-Suit;

B. a permanent injunction prohibiting LifeScan, its officers, directors, attorneys, agents, servants, employees, parties in privity with, and all persons in acting in concert or participation with any of the foregoing and their successors and assigns, from continued acts of infringement of the Patent-in-Suit;

C. an award of money damages to Facet and against LifeScan pursuant to 35 U.S.C. § 284 sufficient to compensate Facet for LifeScan’s patent infringement of the Patent-in-Suit and any continuing or future infringement, including compensatory damages, lost profits, and/or a reasonable royalty;

D. an award of pre-judgment and post-judgment interest in the damages caused by LifeScan’s infringing activities and other conduct complained of herein;

E. a judgment and order finding that this action is exceptional pursuant to 35 U.S.C. § 285 and under the Court’s inherent powers, and an award to Facet of its entire costs and expenses of litigation, including all attorneys’ fees, out of pocket or third-party costs, and experts’ fees incurred in connection with this action, together with pre-judgment and post-judgment interest on all such costs and expenses awarded;

F. an accounting of all infringing sales and supplemental damages to compensate Facet for any infringing sales and damages including, but not limited to, those sales and damages not presented at trial;

G. a compulsory future royalty; and

H. such other and further relief as the Court deems just and equitable.



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Dated: March 15, 2022

Respectfully submitted,

By: /s/ Brandon J. Witkow

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*TECHNOLOGIES, LLC*

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Facet hereby respectfully demands a trial by jury as to all issues in this action so triable.

Dated: March 15, 2022

Respectfully submitted,

By: /s/ Brandon J. Witkow

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