

1 MICHAEL J. SULLIVAN (California Bar No. 264695)  
2 LAW OFFICE OF MICHAEL J. SULLIVAN  
3 111 N. Market St., Suite 300  
4 San Jose, CA 95113  
5 Telephone: (408) 628-8882  
6 E-mail: msullivan@mikesullivanlaw.com

7 Attorney for Plaintiff  
8 FOUNTAIN, INC.

9  
10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12	FOUNTAIN, INC., a California	)	CASE NO.
13	corporation,	)	
14		)	
15	Plaintiff,	)	<b>COMPLAINT FOR INFRINGEMENT</b>
16		)	<b>OF U.S. PATENT NO. 9,077,877</b>
17	vs.	)	
18		)	
19	PROMATE SYSTEM CORPORATION, a	)	
20	California corporation,	)	
21		)	
22	Defendant	)	

23 Plaintiff Fountain, Inc., by its attorney, for its Complaint, alleges as follows:

24 **JURISDICTION AND VENUE**

25 1. This is an action for patent infringement arising under the laws of the United  
26 States, 35 U.S.C. § 1, *et seq.* This Court has original jurisdiction over the subject matter of this  
27 action pursuant to 28 U.S.C. § 1338(a).

28 2. Venue in this judicial district is proper pursuant to 28 U.S.C. §§ 1391(b)(1) and  
1400(b).

3. Personal jurisdiction over the Defendant is proper in this judicial district because,  
on information and belief, the Defendant resides in this judicial district and has committed  
numerous acts of infringement in this judicial district.

**PARTIES**

1  
2 4. Plaintiff Fountain, Inc. is a California corporation with its principal place of  
3 business at 3409 S. Main St., Unit #L, Santa Ana, CA 92707.

4 5. On information and belief, Defendant Promate System Corporation (“Promate”) is a California corporation with its principal place of business at 3710 Rockwell Ave., Unit #C,  
5 El Monte, CA 91731.  
6

**BACKGROUND**

7  
8 6. On July 7, 2015, the U.S. Patent and Trademark Office duly and legally issued  
9 U.S. Patent No. 9,077,877 for the invention entitled “Active Headwear for Detachably  
10 Mounting an Imaging Device” to inventor Thomas Lee Fountain (“Mr. Fountain”). An  
11 assignment was recorded to Mr. Fountain’s company, Fountain, Inc., which still owns the  
12 rights, title, and interest to the ‘877 patent. Fountain, Inc. is listed as the assignee on the face of  
13 the ‘877 patent. A copy of the ‘877 patent is attached as Plaintiff’s Exhibit 1.

14 7. Fountain, Inc. has manufactured and sold, and continues to manufacture and sell,  
15 the Octomask, a product line of diving masks designed to be attached to a camera using the  
16 technology claimed in the ‘877 patent. Fountain, Inc.’s OCTOMASK® product is marked with  
17 the ‘877 patent number.

18 8. On April 23, 2018, Fountain, Inc.’s counsel complained to Amazon.com that  
19 Promate was infringing the ‘877 patent. Amazon.com then promptly removed Promate’s  
20 listings for the complained-of products. On information and belief, at that time, Amazon.com  
21 forwarded the substance of Fountain, Inc.’s complaint to Promate, and Promate became aware  
22 of both the ‘877 patent and Fountain, Inc.’s claim of infringement.

23 9. On January 15, 2023, Fountain, Inc.’s counsel sent a copy of the ‘877 patent to  
24 Promate via mail and email along with a letter demanding that Promate cease infringing the  
25 ‘877 patent. Fountain, Inc.’s counsel did not receive any “undeliverable” or other response that  
26 would indicate that Promate did not receive the mail and email. Sometime after, Promate  
27 removed its online listing for the complained-of product. On information and belief, Promate  
28

1 received and reviewed this additional January 15, 2023 notification of the ‘877 patent and  
2 Fountain, Inc.’s allegations that Promate is infringing the ‘877 patent.

3 10. Fountain, Inc. and its counsel did not receive any response from Promate to the  
4 January 15 letter. On January 30, 2023, Fountain, Inc.’s counsel again contacted Promate by  
5 email and mail. On information and belief, Promate received and reviewed this additional  
6 communication.

7 11. On information and belief, by receipt of the April 2018 notice from Amazon.com  
8 and the January 2023 communications, Promate has been aware of the ‘877 patent and  
9 Fountain, Inc.’s infringement allegations since at least April 2018.

10 12. On information and belief, Promate sells its products through an online retail  
11 store, third party platforms such as eBay, and a network of dealer resellers. On information and  
12 belief, Promate’s online store is located at <https://promateusa.com/shop/>.

13 13. On information and belief, Promate has sold and continues to offer to sell and  
14 sell at least one mask in infringement of the ‘877 patent. Each such product is referred to  
15 hereafter as an “Accused Product,” and collectively these are the “Accused Products.”

16 14. A photo that, on information and belief, is a representative listing for a single  
17 style of Accused Product offered in a variety of colors is attached as Plaintiff’s Exhibit 2.

18 15. On information and belief, Promate manufactures inside the United States and/or  
19 imports into the United States the Accused Products.

20 16. On information and belief, each Accused Product is described by one or more  
21 claims of the ‘877 patent, including at least one or more of claims 6 through 8. Therefore, any  
22 unauthorized making, use, offering to sell, and selling within the United States, and  
23 importation into the United States, of the Accused Products is an infringement of the ‘877  
24 patent.

25 **CLAIM FOR RELIEF OF INFRINGEMENT**

26 17. On information and belief, Promate has made, used, sold, offered to sell and/or  
27 imported into the United States the Accused Products from at least April 2018 despite actual  
28 notice of the ‘877 patent. The Accused Products fall within the scope of one or more claims of

1 the '877 patent. On information and belief, the Accused Products are and have been sold to  
2 distributors, retailers and/or customers who resell and/or use the Accused Products throughout  
3 the United States, including in the State of California, including in this judicial district.

4 18. Promate's acts in making, using, offering to sell, selling, and/or importing into  
5 the United States, within the State of California and elsewhere in the United States, the  
6 Accused Products infringe, induce others to infringe, and/or contributorily infringe the claims  
7 of the '877 patent under 35 U.S.C. § 271 without authority to do so.

8 19. On information and belief, Promate's infringement of the '877 patent has been  
9 willful, deliberate and in conscious disregard of Fountain, Inc.'s rights. By making, using,  
10 offering to sell, selling and/or importing into the United States the Accused Products, Promate  
11 knew or should have known that Fountain, Inc. had patent rights infringed by the Accused  
12 Products.

13 20. Fountain, Inc. has suffered damages, including loss of sales and profits, as a  
14 result of Promate's infringing activities.

15 21. As a result of Promate's infringing activities, Fountain, Inc. has suffered and will  
16 continue to suffer irreparable injury, unless Promate is permanently enjoined by this Court.

17 22. This case is exceptional and, therefore, Fountain, Inc. is entitled to an award of  
18 its expenses, costs, and attorneys' fees in accordance with 35 U.S.C. § 285 and Fed. R. Civ. P.  
19 54(d).

20  
21 **DEMAND FOR JUDGMENT**

22 **WHEREFORE**, Fountain, Inc. requests the following relief:

- 23 1. A judgment that Promate's making, using, offering to sell, selling, and/or importing  
24 into the United States, within the State of California and elsewhere in the United  
25 States, the Accused Products infringes, actively induces others to infringe, and/or  
26 contributorily infringes the '877 patent;
- 27 2. A judgment permanently enjoining Promate's infringing activities pursuant to 35  
28 U.S.C. § 283;

- 1 3. A judgment awarding Fountain, Inc. the damages to which it is entitled for
- 2 Promate's willful acts of infringement complained of herein, including an award of
- 3 damages and trebling of that award pursuant to 35 U.S.C. § 284, together with pre-
- 4 judgment and post-judgment interest;
- 5 4. A judgment declaring that this case is exceptional and awarding Fountain, Inc. its
- 6 expenses, costs, and attorneys' fees in accordance with 35 U.S.C. § 285 and Fed. R.
- 7 Civ. P. 54(d); and
- 8 5. Such other further relief as the Court deems just and proper.
- 9

10 Respectfully submitted,

11  
12 DATED: March 17, 2023

13 /s/Michael J. Sullivan  
14 Michael J. Sullivan  
15 (California Bar No. 264695)  
16 LAW OFFICE OF MICHAEL J. SULLIVAN  
17 111 N. Market St., Suite 300  
18 San Jose, CA 95113  
19 Telephone: (408) 628-8882  
20 E-mail: msullivan@mikesullivanlaw.com

21  
22  
23  
24  
25  
26  
27  
28  
Attorney for Plaintiff  
FOUNTAIN, INC.