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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DON CARR,

Plaintiff,

v.

HOMELAND PATROL DIVISION SECURITY,
LLC, JOSHUA STIVERS, STEPHEN PANSINI,
BOLD IP, PLLC, and JOHN HOUVENER,

Defendants.

Civil Action No.

COMPLAINT FOR DECLARATORY
JUDGMENT OF NO PATENT
INFRINGEMENT, CORRECTION OF
PATENT INVENTORSHIP, UNJUST
ENRICHMENT, AND BREACH OF
FIDUCIARY DUTY

Plaintiff Don Carr (“Mr. Carr”) alleges as follows against Homeland Patrol Division Security, LLC (“HPDS”), Joshua Stivers (“Mr. Stivers”), Stephen Pansini (“Mr. Pansini”), Bold IP PLLC (“Bold”), and John Houvener (“Mr. Houvener”). Mr. Carr conceived a computer-based invention that would use facial recognition and a prior-incident database as a security tool for security officers handling trespass events. He filed a patent application for his invention, through his personal attorneys Mr. Houvener and Bold. His then-business associates Mr. Stivers and Mr. Pansini convinced Mr. Houvener and Bold to attempt to withdraw from representing Mr. Carr and then to add them to Mr. Carr’s patent application and ultimately to pursue the patent by omitting Mr. Carr as an inventor. After Mr. Pansini and Mr. Stivers received a patent based on

1 Mr. Carr’s original application, they assigned it to their company HPDS and threatened to sue
2 Mr. Carr for infringing the patent. The asserted patent is built upon Mr. Carr’s original invention
3 (indeed, it expressly claims the benefit of it), but it adds a few details not used by Mr. Carr and
4 thus he does not infringe it. Through this complaint, Mr. Carr seeks remedies for injuries caused
5 by this misconduct, including a declaration of noninfringement, addition as a co-inventor to the
6 patent, an award of damages, and other relief.

7 **PARTIES**

8 1. Mr. Carr is an individual residing in Bonney Lake, Washington. Mr. Carr is a
9 governor of Wolf Creek Security Seattle, Inc., and of Wolf Creek Security Tacoma, Inc.
10 (collectively, “Wolf Creek”). Wolf Creek provides security-related services to customers in
11 Washington, including in Seattle and in Tacoma.

12 2. HPDS is a Washington limited liability company having a principal place of
13 business at 4500 9th Avenue NE, Suite 300, Seattle, Washington 98105. HPDS describes itself as
14 “a full service private security guard agency that is owned and operated by former law enforcement
15 and military.”

16 3. Mr. Pansini is an individual who, upon information and belief, resides at 858
17 Larkspur Lane, Brentwood, California 94513. Mr. Pansini is an owner, governor, and registered
18 agent for HPDS. Washington state corporate records show that, for his purposes as the registered
19 agent, Mr. Pansini maintains a street address office at 4500 9th Avenue NE, Suite 300, Seattle, WA
20 98105, and further that he maintains a mailing address at PO Box 73100, Puyallup, WA, 98373.
21 Through HPDS, Mr. Pansini offers security services to consumers in Washington. Along with
22 Mr. Stivers, Mr. Pansini is personally listed as an HPDS principal who offers and provides security
23 services to Washington consumers.

1 4. Mr. Stivers is an individual residing at 17317 128th Avenue Ct. E., Puyallup,
2 Washington 98374. Mr. Stivers is a governor and owner of HPDS, and he provides security
3 services to Washington consumers along with Mr. Pansini.

4 5. Bold is a Washington Professional Limited Liability Company having a principal
5 place of business at 6100 219th Street SW, Suite 480, Mountlake Terrace, Washington, 98043.

6 6. Mr. Houvener is an attorney, governor, and managing partner at Bold. Upon
7 information and belief, Mr. Houvener resides at 2282 107th Place, SE, Everett, Washington, 98208.

8 **JURISDICTION AND VENUE**

9 7. Mr. Carr seeks a declaratory judgment of noninfringement with respect to U.S.
10 patent 11,348,367 (the ‘367 patent) held by HPDS. The underlying patent infringement assertion
11 arises under the Patent Laws of the United States, 35 U.S.C. § 1 et seq., including without
12 limitation 35 U.S.C. § 271, based on the actions of Mr. Carr and Wolf Creek, which are alleged by
13 HPDS to infringe the ‘367 patent. This Court has jurisdiction over the subject matter of this claim
14 pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, and further in that it is a federal
15 question under 28 U.S.C. § 1331 and is a patent infringement action for which there is original
16 jurisdiction under 28 U.S.C. § 1338(a).

17 8. Mr. Carr further seeks a correction of inventorship of the ‘367 patent. This claim
18 also arises under the Patent Laws, including 35 U.S.C. § 256, and this Court has jurisdiction under
19 28 U.S.C. § 1331 and 1338(a).

20 9. The additional claims, including those against defendants Bold and Mr. Houvener,
21 are so related to the claims for which there is original jurisdiction in this Court that they form part
22 of the same case or controversy. This Court has jurisdiction over such claims pursuant to
23 28 U.S.C. § 1367.

1 operator, recording the audio when the statement was read to the suspect. When completed, it
2 would transmit the recorded statement and related information to a server where it could be added
3 to the database of prior events. Users of the software and system could retrieve reports showing
4 prior incident histories of suspects.

5 13. On or about September 19, 2018, well after his conception of FaceScope, Mr. Carr
6 started a Washington company called Bluewave Technologies, LLC (“Bluewave”) with the
7 intention that Bluewave would use and commercially exploit his FaceScope technology.

8 14. On October 2, 2018 Mr. Carr received a representation letter from his patent
9 attorney Mr. Houvener and his patent law firm, Bold, regarding possible patent protection for the
10 FaceScope invention. The representation letter was directed to Mr. Carr as an individual, not to
11 Bluewave or any others. Mr. Carr signed the letter on October 12, 2018.

12 15. At Mr. Carr’s direction, Mr. Houvener and Bold filed a patent application for the
13 FaceScope invention on December 24, 2018, as U.S. application serial number 62/785,974 (the
14 “Provisional Patent Application”).

15 16. The Provisional Patent Application named Mr. Carr as the sole inventor and as the
16 applicant.

17 17. The Provisional Patent Application was filed together with a power of attorney
18 signed by Mr. Carr, appointing as his patent attorneys the attorneys associated with U.S. Patent
19 and Trademark Office (“USPTO”) customer number 120407, thereby appointing Bold,
20 Mr. Houvener, and other Bold attorneys associated with this customer number.

21 **Mr. Carr’s Business Collaborations with the Other Defendants**

22 18. Each of Mr. Carr, Mr. Stivers, and Mr. Pansini had a role in Bluewave. On or about
23 October 31, 2018, the three of them entered into an “Equity Investment Agreement” in Bluewave.

1 By this time, the FaceScope program had long-since been conceived, and a working beta version
2 was either completed or nearly so.

3 19. On March 28, 2018, Mr. Stivers and Mr. Carr formed an entity called Homeland
4 Patrol Division, LLC (“HPD”), which sounds similar to defendant HPDS, but was nonetheless a
5 distinct entity. HPD was formed to provide security guard and related services. During its
6 existence, Mr. Carr, Mr. Stivers, and Mr. Pansini all had a role in HPD.

7 20. On July 15, 2019, Mr. Stivers filed a certificate of dissolution for Bluewave,
8 requesting the voluntary dissolution of Bluewave as a Washington company.

9 21. On or about May 2, 2019, Mr. Carr sold his interest in HPD to Mr. Pansini.

10 22. On or about July 15, 2019, HPD was formally dissolved.

11 23. HPDS was formed on or about July 15, 2019.

12 **The Change in Inventorship of the Provisional Patent Application**

13 24. With the Provisional Patent Application having been filed on December 24, 2018,
14 there were no further filing requirements until a year later, when a utility patent application would
15 have to be filed in order to claim the benefit of the Provisional Patent Application filing date.
16 Mr. Carr could file a utility application sooner if desired, but need not file one prior to
17 December 24, 2019 in order to preserve the benefit of his Provisional Patent Application filing
18 date.

19 25. On August 19, 2019, Bold and Mr. Houvener sent a letter of disengagement to
20 Mr. Carr. In pertinent part, the letter read as follows:

21 **Thank you for allowing Bold IP, PLLC to work with you on your patent matters. We**
22 **have not received any return communication (phone or email) from you in regard to**
23 **the emergency statuses of your patent applications. We are therefore disengaging**
24 **as your counsel.**

1 26. Thus, the letter stated that Mr. Carr had not returned phone calls or emails regarding
2 the “emergency” status of his patent applications. The letter did not identify the purported
3 emergency, and there was no actual emergency.

4 27. Upon information and belief, on or before August 19, 2019, Mr. Houvener and Bold
5 had communicated with Mr. Stivers and Mr. Pansini to discuss strategies for their exploitation of
6 Mr. Carr’s Provisional Patent Application.

7 28. Upon information and belief, such communications involved the disclosure to
8 Mr. Stivers and Mr. Pansini of information confidential to Mr. Carr. Upon information and belief,
9 such communications involved advice to Mr. Stivers and Mr. Pansini regarding strategies or
10 actions adverse to Mr. Carr’s interests.

11 29. Bold and Mr. Houvener asserted the existence of an emergency in their letter of
12 August 19, 2019 as a device to support the disengagement letter, and to facilitate representation of
13 Mr. Pansini and Mr. Stivers by Bold and Mr. Houvener. Bold and Mr. Houvener knew there was
14 no emergency, despite the assertion in the letter that there was an emergency.

15 30. Upon information and belief, Bold and Mr. Houvener provided legal advice to
16 Mr. Pansini and Mr. Stivers regarding the Provisional Patent Application prior to August 19, 2019.
17 Upon information and belief, Bold and Mr. Houvener executed a formal representation agreement
18 with Mr. Pansini and Mr. Stivers on or after August 19, 2019, but prior to December 24, 2019.

19 31. A patent attorney who has been given a power of attorney may withdraw from
20 representing a patent applicant upon application to and approval by the Director of the USPTO.
21 Although Bold and Mr. Houvener sent a disengagement letter to Mr. Carr, they did not file papers
22 in the USPTO requesting to withdraw from representation of Mr. Carr with respect to the
23 Provisional Patent Application.

1 32. Bold and Mr. Houvener took no action with respect to the Provisional Patent
2 Application in August or September, 2019. This inactivity confirms that there was no emergency
3 in August, 2019, as had been asserted in the disengagement letter.

4 33. To the extent there was an issue with respect to the Provisional Patent Application
5 on or about August 19, 2019, it was solely related to the potential addition of Mr. Stivers and
6 Mr. Pansini as inventors. This issue, however, was not an emergency.

7 34. On or about October 31, 2019, attorney Christopher Mayle on behalf of Bold (upon
8 information and belief, acting under the direction of Mr. Houvener) filed a paper entitled “Request
9 for Correction in Patent Application Relating to Inventorship Under 37 CFR 1.48(d).” Through
10 this request, Bold asked that Mr. Pansini and Mr. Stivers be added to the Provisional Patent
11 Application as co-inventors along with Mr. Carr.

12 35. To add insult to injury, the request by Mr. Mayle specifically stated that Mr. Carr
13 should be the last-named inventor, asserting that “The inventorship should now read Joshua A.
14 Stivers, Stephen D. Pansini, and Don Carr.” Patents and patent applications having multiple co-
15 inventors are commonly referred to by identifying only the first-named inventor and
16 acknowledging any other inventors as “et al.” Consequently, the instruction as to the order of
17 inventors would ensure that Mr. Carr’s name would be omitted in this naming convention, and that
18 the inventors of the Provisional Patent Application would be referred to as “Stivers, et al.”

19 36. The USPTO eventually approved the request to add Mr. Stivers and Mr. Pansini,
20 issuing a new filing receipt on November 12, 2019. The new filing receipt listed the inventors in
21 the order as requested by Mr. Mayle.

22 37. Mr. Stivers and Mr. Pansini each executed power of attorney documents appointing
23 as their attorneys those patent practitioners associated with customer number 120407.

1 Accordingly, they appointed Bold and Mr. Houvener (along with others at Bold) as their attorneys.
2 Again, there was no request filed in the USPTO to withdraw from representation of Mr. Carr.
3 Consequently, USPTO records show that Bold and Mr. Houvener represented Mr. Carr,
4 Mr. Stivers, and Mr. Pansini collectively and simultaneously as of the time of the change of
5 inventorship submission.

6 38. Mr. Carr did not consent to discussions between Bold and Mr. Houvener on the one
7 hand, and Mr. Stivers and Mr. Pansini, on the other regarding inventorship or other aspects of his
8 Provisional Patent Application.

9 39. Mr. Carr did not consent to the addition of Mr. Stivers or Mr. Pansini as named co-
10 inventors on his Provisional Patent Application.

11 40. Even if Mr. Stivers and Mr. Pansini had contributed to the conception of the
12 invention of the Provisional Patent Application, Bold and Mr. Houvener owed a continuing duty
13 to Mr. Carr as either a current or former client, and the addition of Mr. Stivers and Mr. Pansini as
14 co-inventors without Mr. Carr's consent violated duties owed to Mr. Carr.

15 41. The addition of Mr. Stivers and Mr. Pansini as named co-inventors on the
16 Provisional Patent Application was adverse to Mr. Carr's interests.

17 42. Mr. Carr did not agree to waive any conflicts of interest in representation with
18 respect to his Provisional Patent Application.

19 **The Application Resulting in the '367 Patent**

20 43. On December 24, 2019, Bold and Mr. Houvener filed utility patent application
21 serial number 16/726,569 (the "Utility Patent Application") in the U.S. Patent and Trademark
22 Office for an invention entitled, "System and method of biometric identification and storing and
23 retrieving suspect information." The title of the Provisional Patent Application is "Method and
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1 system of biometric identification and storing and retrieving suspect information.” Thus, the two
2 titles are identical except that the words “system” and “method” are reversed.

3 44. The Utility Patent Application claimed the benefit of the Provisional Patent
4 Application, and thus the entitlement of the benefit of its filing date nearly a year earlier.

5 45. The Utility Patent Application named only Mr. Stivers and Mr. Pansini as inventors,
6 omitting Mr. Carr as a named inventor.

7 46. The actions by Bold and Mr. Houvener to file the Utility Patent Application for
8 Mr. Stivers and Mr. Pansini, while claiming the benefit of the Provisional Patent Application, was
9 inherently adverse to Mr. Carr’s interests.

10 47. The ‘367 patent includes a statement expressly incorporating, in its entirety, the
11 content of the Provisional Patent Application.

12 48. The Provisional Patent Application was filed with a single claim, reproduced below.
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I. A computer-implemented method for storing suspect information, comprising the steps of:
generating, by one or more computer processors, suspect facial data from an image of a suspect captured on a user's mobile device;
receiving, by the one or more computer processors at a service server, the suspect facial data transmitted from the user's mobile device,
performing, by the one or more computer processors at the service server, facial recognition processing on the suspect facial data to establish suspect facial recognition data;
comparing, by one or more computer processors at the service server, the suspect facial recognition data to a database of facial recognition data to identify any suspect match;
transmitting, by the one or more computer processors at the service server to the mobile device, either the personal information of an identified suspect or an indication of no suspect match;
displaying, by one or more computer processors, on the mobile device a selectable input graphical user interface, the interface including one or more condition input screen for suspect personal information;
displaying, by one or more computer processors, on the mobile device a trespass statement;
recording, by one or more computer processors, on the mobile device an audio recording of the user reading the suspect the displayed trespass statement; and
transmitting, by one or more computer processors on the mobile device to the service server, the suspects personal information and the recorded trespass statement.

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49. The '367 patent was granted with claims containing nearly all of the above content, and thus many of the same limitations, either verbatim or rearranged in superficial ways.

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50. For example, claim 1 of the '367 patent is set forth below. This claim includes the limitations of generating, receiving, performing, comparing, recording, and transmitting, as with the claim in the Provisional Patent Application above.

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**1. A suspect identification system comprising:
one or more databases coupled via a network;
one or more processors coupled to the one or more
databases; and
at least one computing device coupled to the one or more
processors and the one or more databases via the
network, wherein instructions are executed by the at
least one computing device to perform:
generating suspect facial data from an image of a
suspect captured on a user's computing device;
receiving the suspect facial data transmitted from the
user's computing device;
performing facial recognition processing on the suspect
facial data to establish suspect facial recognition
data;
comparing the suspect facial recognition data to pre-
existing information stored in a database to identify
a suspect match wherein if there is a determination,
personal information of an identified suspect is trans-
mitted wherein if there is no determination a notifi-
cation displaying no match is transmitted;
storing one or more trespass statements in the one or
more databases, the one or more trespass statements
having information pertaining to criminal or civil
laws;
transmitting the one or more trespass statements to the
user's computing device for display; and
automatically recording video when the one or more
trespass statements is displayed.**

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51. Many other claims in the '367 patent have the same limitations contained in claim 1 above. The content of most of the limitations of the claims of the '367 patent is contained in the Provisional Patent Application (whether in its claim, its specification text, or the drawings), and thus Mr. Carr contributed to most of the limitations in most of the claims of the '367 patent.

1 52. The ‘367 patent includes illustrations and written content which is either identical
2 to or modified from the Provisional Patent Application. In preparing the Utility Patent application.
3 Bold and Mr. Houvener used the content of Mr. Carr’s Provisional Patent Application.

4 53. Mr. Carr’s conceptions contributed to at least one limitation of at least one claim in
5 the ‘367 patent.

6 54. The USPTO issued a notice of allowance of the Utility Patent Application on or
7 about January 31, 3022.

8 55. Mr. Stivers and Mr. Pansini originally filed the Utility Patent Application as owner-
9 applicants and co-inventors. On April 3, 2022, they each executed an assignment of their rights to
10 HPDS. In that assignment, each of them listed their address as PO Box 73100, Puyallup, WA
11 98373. Bold IP recorded the assignment in the USPTO on April 4, 2022.

12 56. The ‘367 patent was granted on May 31, 2022, in the name of HPDS as assignee.

13 **The Assertion of the ‘367 Patent against Mr. Carr and Wolf Creek**

14 57. On October 11, 2022, HPDS sent a letter to Mr. Carr (and his company Wolf Creek,
15 along with other individuals at Wolf Creek). The letter asserted that Mr. Carr and others were
16 infringing the ‘367 patent, demanding that they “CEASE AND DESIST” as reflected in the front
17 page of the letter shown below.

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19 **RE: CEASE AND DESIST PATENT INFRINGEMENT**
 United States Patent No. 11,348,367

20 Inventors: Joshua A. Stivers; Stephen D. Pansini

21 Assignee: Homeland Patrol Division Security, LLC
 4500 9th Ave NE, Suite 300, Seattle, WA 98105

22 Family ID: 71121791
23 Appl. No.: 16/726,569

1 58. The letter added that “You do not have authorization from Homeland [HPDS] to be
2 using the technology covered by the patent...” The letter concluded that HPDS would file a lawsuit
3 if such acts did not cease, and asserted that HPDS would seek remedies including “punitive,
4 enhanced, and treble damages” under the Patent Act. The letter did not include a claim chart, nor
5 did it include any substantive content mapping any claims to the accused conduct. Upon
6 information and belief, HPDS performed no analysis of the ‘367 patent with respect to the accused
7 conduct. The assertion of infringement was objectively baseless and in bad faith.

8 59. Counsel for Mr. Carr responded on January 3, 2023, explaining in detail why there
9 was no infringement.

10 60. As Mr. Carr’s response letter stated, independent claims 1 and 10 of the ‘367 patent
11 both require (among other things) that the “computing device” must *automatically* record *video*,
12 and that this must occur *when* one or more trespass statements is displayed. Dependent claim 13
13 also contains this requirement.

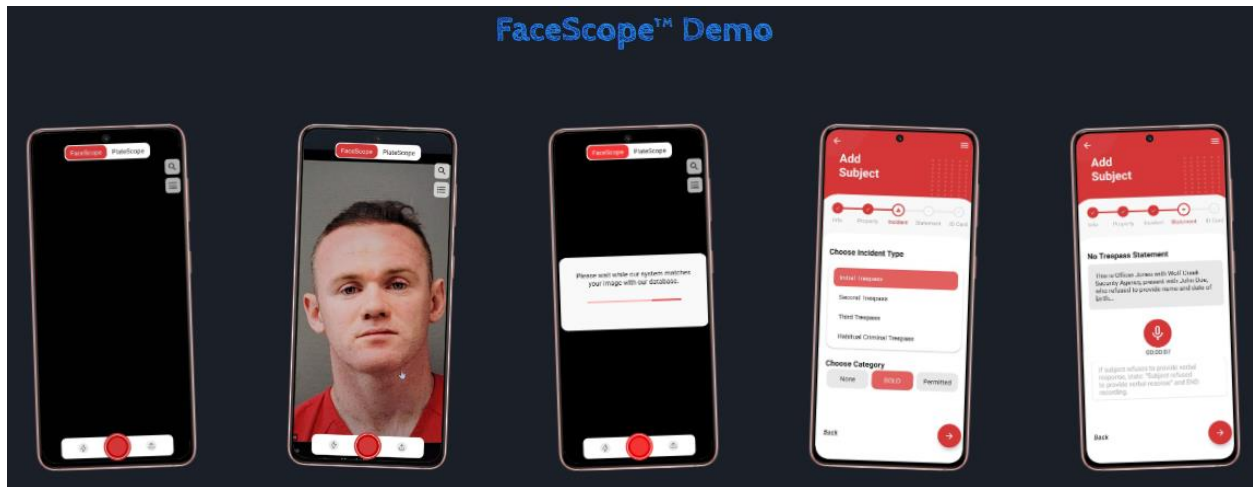
14 61. The Provisional Patent Application included the feature of automatic recording of
15 either the audio or video interaction with the suspect and user, but Mr. Carr did not include that
16 feature in his commercial embodiment as accused.

17 62. The accused system operated by Mr. Carr captures a still photo of the subject, but
18 does not record video. A still photo is not “video,” as a person of ordinary skill in the art would
19 understand, and as the ‘367 patent makes clear. *See* ‘367 patent at 8:25-26; 9:35-37 (differentiating
20 video from photos).

21 63. In addition, automatic and manual recording are distinct from one another, which
22 the patent also makes clear. In a first version described in the specification of the ‘367 patent, the
23 user must press a button to start and stop the recording. In a second version, the user device
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1 automatically records the interaction. *See* '367 patent at 11:50-63. Plainly, a manual operation is
 2 the opposite of an automatic one, and if the user presses a button to start recording then it is manual,
 3 not automatic. Even if the accused system did record video, it would not infringe claims 1-10 or
 4 13 because there is no automatic recording of video.

5 64. Pertinent aspects of the operation of the accused system (that is, the system used by
 6 Wolf Creek, by Mr. Carr at Wolf Creek) are shown in the images below. As shown in the second
 7 image from the left, the user can initially capture a still photo. There is no trespass statement at
 8 that time, it is manually triggered, and it is not video. After further processing and selection of an
 9 incident type, the user can read the trespass statement and press the microphone button, as shown
 10 in the subsequent screen displays below. The recording that is possible with the trespass statement
 11 (shown in the last screen display) is only audio, not video (indicated by the microphone icon, which
 12 is not a video icon), and is also a manual act, not an automatic one (the user must press the
 13 microphone icon).



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 21 65. Consequently, there can be no possible infringement of claims 1-10 or 13 because
 22 there is no video automatically being recorded when the trespass statement is displayed.

1 66. Claims 11 and 12 do not contain the automatic recording of video limitation. They
2 do, however, impose a requirement that the server must store region-specific trespass statements.
3 The server must then, after performing the facial recognition, determine the region in which the
4 user is located based on a received location from the user’s computing device, and send the region-
5 specific trespass statement to the user computer based on this analysis. The accused system does
6 not perform this requirement, and therefore cannot infringe claims 11 or 12.

7 67. The above points of distinction are not an exhaustive comparison between the
8 claims of the ‘367 patent and the accused system, but they are sufficient to avoid infringement
9 because a claim is only infringed if the accused system satisfies every limitation of at least one
10 claim. Nonetheless, the accused system does not infringe any claim of the ‘367 patent for
11 additional reasons beyond those set forth above.

12 68. HPDS did not respond to the above letter from Mr. Carr’s counsel, nor did it retract
13 the assertion of patent infringement.

14 69. Mr. Carr followed up to inquire about the letter from his counsel, asking why HPDS
15 had not answered it or even acknowledged it. Counsel for HPDS asserted that the letter was
16 incompetent, suggesting that he need not reply to an incompetent letter. The tenor of the response
17 from HPDS indicated that it continued to assert that there was infringement of the patent.

18 70. There remains a real and continuing case of actual controversy regarding
19 infringement of the ‘367 patent by Mr. Carr, individually and through the actions of his company
20 Wolf Creek.

21 **Injury to Mr. Carr**

22 71. Mr. Carr has been injured by the foregoing actions of the defendants. Among other
23 things, he has incurred monetary costs associated with defending himself against a patent
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1 infringement accusation that is baseless, based on a patent which should have included him as a
2 co-inventor, and needing to correct the erroneous inventorship.

3 72. But for the actions of the defendants, the application for '367 patent would not have
4 been filed in a manner that omitted Mr. Carr as an inventor. Likewise, but for these acts, HPDS
5 would not have been able to accuse Mr. Carr (and the others) of infringing the '367 patent. In
6 addition, but for these acts, Mr. Carr would not be faced with a need to correct the inventorship in
7 the '367 patent, and to incur the costs to do so.

8 73. The above acts of the defendants were willful. The defendants were aware of
9 Mr. Carr's contributions as an inventor, but they intentionally removed him and pursued a patent
10 in a manner which excluded him altogether. The defendants were also aware, or objectively should
11 have been aware, that Mr. Carr has not infringed the '367 patent, but they baselessly accused him
12 of infringement nonetheless, causing damage.

13 **Claim 1: Declaratory Judgment of Noninfringement (against HPDS)**

14 74. Mr. Carr incorporates by reference each of the foregoing allegations.

15 75. There is a justiciable controversy between HPDS and Mr. Carr regarding whether
16 Mr. Carr has, directly or indirectly, contributorily or by inducement, infringed any claims of the
17 '367 patent.

18 76. Mr. Carr has not infringed any claims of the '367 patent by making, using, offering
19 for sale, selling, or importing anything, including without limitation by performing those acts for
20 which HPDS has accused him of infringement.

21 77. Mr. Carr's FaceScope system, as used by Mr. Carr or his agents, customers,
22 licensees, or others, does not infringe any claim of the '367 patent.

1 78. Mr. Carr is entitled to a declaratory judgment that he has not directly or indirectly,
2 contributorily or by inducement, infringed any claims of the '367 patent.

3 79. The assertion of infringement was objectively baseless, and this case is exceptional
4 under 35 U.S.C. § 285. Mr. Carr should be awarded his attorneys' fees incurred in this action.

5 **Claim 2: Correction of Inventorship (against HPDS, Pansini, and Stivers)**

6 80. Mr. Carr incorporates by reference each of the foregoing allegations.

7 81. Mr. Carr was the inventor of the subject matter of the Provisional Patent
8 Application.

9 82. Mr. Carr contributed to the subject matter of at least one limitation of at least one
10 claim of the '367 patent.

11 83. The '367 patent claims the benefit of the Provisional Patent Application, and
12 incorporates its content by reference in its entirety.

13 84. Mr. Carr was omitted as a named inventor on the application which resulted in the
14 '367 patent.

15 85. Mr. Carr is not named as an inventor on the '367 patent. This omission was
16 erroneous and without any deceptive intent on Mr. Carr's part.

17 86. The '367 patent should be corrected to add Mr. Carr as a named inventor.

18 87. The omission of Mr. Carr was intentional and egregious, and this case is exceptional
19 under 35 U.S.C. § 285. Mr. Carr should be awarded his attorneys' fees incurred in this action.

20 **Claim 3: Unjust Enrichment (against Pansini, and Stivers)**

21 88. Mr. Carr incorporates by reference each of the foregoing allegations.

22 89. Mr. Stivers and Mr. Pansini obtained the benefit of Mr. Carr's invention, adding
23 themselves as co-inventors to the Provisional Patent Application and subsequent Utility Patent
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1 Application which matured into the '367 patent. Moreover, they claimed the benefit of
2 inventorship status to the exclusion of Mr. Carr. Through this benefit, they obtained a patent with
3 their names on it as co-inventors, and with a claimed priority date much earlier than they could
4 have achieved without this benefit.

5 90. Mr. Stivers and Mr. Pansini further obtained the benefit of the textual substance of
6 the Provisional Patent Application and drawings, allowing the drafting of the Utility Patent
7 Application faster and at a lower cost than if they had filed their own utility patent application
8 starting from scratch.

9 91. These benefits were conferred upon Mr. Stivers and Mr. Pansini while they were
10 engaged in a relationship of confidence and trust. The Provisional Patent Application was filed in
11 confidence, and the serial number of the Provisional Patent Application was not public knowledge.
12 Mr. Carr was also in a business relationship with Mr. Stivers and Mr. Pansini at the time.

13 92. Mr. Pansini and Mr. Stivers were aware of the benefits they received. They
14 personally signed documents adding themselves to the Provisional Patent Application, as well as
15 declarations directed specifically to the Utility Application stating that the application (including
16 its claim to the benefit of the Provisional Patent Application) was authorized by each of them. They
17 subsequently received the granted '367 patent with the full knowledge that it was based on an
18 application originally filed by Mr. Carr.

19 93. It would be unjust to allow Mr. Stivers and Mr. Pansini to retain these benefits under
20 the circumstances, without compensation to Mr. Carr.

21 94. There is no adequate remedy at law to fully redress the retention of these unjust
22 benefits.

1 95. Mr. Carr should be awarded damages and other relief sufficient to compensate for
2 the injuries caused.

3 **Claim 4: Breach of Fiduciary Duty (against Houvener and Bold)**

4 96. Mr. Carr incorporates by reference each of the foregoing allegations.

5 97. Mr. Houvener and Bold were Mr. Carr's attorneys with respect to the invention of
6 the Provisional Patent Application and related subject matter. This relationship was confirmed in
7 the representation letter and the power of attorney submitted in the USPTO.

8 98. Mr. Houvener and Bold owed a duty of confidentiality to Mr. Carr under RPC 1.6,
9 and that duty would require them to maintain in secrecy information such as the serial number and
10 other details of the provisional patent application.

11 99. Mr. Houvener and Bold also owed duties of loyalty to Mr. Carr, and to avoid
12 conflicts of interest with their representation of Mr. Carr, under RPCs 1.7, 1.8, and 1.9.

13 100. The USPTO imposes a parallel set of ethical rules in the USPTO Rules of
14 Professional Conduct, set forth at 37 C.F.R. §11.1 *et seq.* Under Rule 106, the patent practitioner
15 owes duties of confidentiality and may not reveal information relating to the representation of the
16 client without informed consent. Under Rule 107 the patent practitioner owes duties to avoid
17 conflicts of interest with current clients, and under Rule 109 those duties extend to former clients.
18 As Rule 109 provides, "A practitioner who has formerly represented a client in a matter shall not
19 thereafter represent another person in the same or a substantially related matter in which that
20 person's interests are materially adverse to the interests of the former client unless the former client
21 gives informed consent, confirmed in writing." Rules 109 and 110 extend this prohibition to all
22 attorneys in the firm. Relatedly, Rule 109 states that the patent practitioner may not use information
23 relating to the representation of a former client to the disadvantage of the former client.

1 101. Mr. Houvener and Bold did not fulfill the fiduciary duties owed to Mr. Carr. As
2 attorneys and patent practitioners, counsel at Bold IP owed these duties to Mr. Carr, personally.
3 They could not reveal his confidences, including the content and serial number for the provisional
4 patent application. They could not represent others in conflict to his interests, including by adding
5 Mr. Stivers and Mr. Pansini as inventors to the Provisional Patent Application without Mr. Carr’s
6 consent, or by filing the Utility Patent Application linked to the Provisional Patent Application
7 while naming the others as inventors and omitting Mr. Carr as a named inventor. The Provisional
8 Patent Application and subsequent Utility Patent Application are plainly the “same or substantially
9 related matter” in which the attorneys represented Mr. Carr, and the conduct of Mr. Houvener and
10 Bold with respect to those applications was indisputably materially adverse to Mr. Carr. Indeed,
11 those acts resulted in a granted patent which has now been asserted against him, making it difficult
12 to imagine a case which is more materially adverse.

13 102. The USPTO’s Office of Enrollment and Discipline (“OED”) has specifically found
14 patent practitioners to have acted in violation of the above USPTO ethical rules by naming certain
15 current or former clients as inventors to the exclusion of other current or former clients.

16 103. As a matter of law, the relationship of Mr. Houvener and Bold with Mr. Carr was a
17 fiduciary one.

18 104. Mr. Houvener and Bold breached fiduciary duties owed to Mr. Carr, including
19 duties based in an obligation of confidence, loyalty, or both.

20 105. Mr. Carr was injured as a result of the breach of fiduciary duty. Mr. Stivers and
21 Mr. Pansini were able to obtain the ‘367 patent which claimed the benefit of the earlier Provisional
22 Patent Application filing date but which omitted Mr. Carr as an inventor. They were then able to
23 assert that patent against Mr. Carr, having assigned it to their company HPDS, which they own
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1 and control. Mr. Carr suffered monetary and other damages resulting from this assertion, including
2 the need to defend himself against allegations of infringement, and to seek correction of
3 inventorship.

4 106. Mr. Carr should be awarded damages and other relief sufficient to compensate for
5 the injuries caused.

6 **Request for Relief**

7 Mr. Carr requests the following relief:

8 1. A declaratory judgment that he has not infringed any claims of the '367 patent,
9 whether directly or indirectly, contributorily or by inducement, and including all of his customers,
10 agents, licensees, or others in active concert or participation with him with respect to actions
11 accused of infringement by HPDS.

12 2. A judgment that this is an exceptional case within the meaning of 35 U.S.C. § 285.

13 3. A correction the inventorship of the '367 patent to add Mr. Carr as a named inventor.

14 4. An award of damages adequate to compensate Mr. Carr for the injuries suffered,
15 including attorneys' fees and costs of the action.

16 5. An award of pre-judgment and post-judgment interest.

17 6. Such other and further relief as the Court deems just and equitable.

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19 **JURY TRIAL DEMANDED**

20 Mr. Carr demands a trial by jury on all issues so triable.
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DATED this 20th day of March, 2023.

LOWE GRAHAM JONES^{PLLC}

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