

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)

HUMANSCALE CORPORATION)	
)	
Plaintiff,)	Civil Action No. 3:09DV86.JRS
)	
v.)	
)	ANSWER, AFFIRMATIVE DEFENSES
COMPX INTERNATIONAL INC. and)	AND COUNTERCLAIMS
COMPX WATERLOO)	
)	JURY TRIAL DEMANDED
Defendants.)	

Defendants CompX International Inc. and Waterloo Furniture Components Limited d/b/a/ CompX Waterloo (collectively “CompX”), by their attorneys, hereby answer the Complaint for Patent Infringement filed by Plaintiff Humanscale Corporation (“Humanscale”) and assert the following affirmative defenses and counterclaims.

I. INTRODUCTION

1. CompX admits that this is a complaint alleging patent infringement against CompX International Inc. and CompX Waterloo regarding U.S. Patent No. 5,292,097C1 (“the ‘097” patent”). CompX denies infringement of the ‘097 patent.

2. CompX admits that Humanscale seeks relief against CompX. CompX denies the remaining allegations contained in paragraph 2 of the Complaint.

II. JURISDICTION AND PARTIES

A. Jurisdiction

3. CompX admits that patent infringement arises under the patent laws of the United States, 35 U.S.C. §§ 271 and 281, et. seq. and that the Court has original jurisdiction over

patent infringement actions under 28 U.S.C. § 1338(a). CompX denies infringement of the '097 patent.

4. CompX denies the allegations contained in paragraph 4 of the Complaint.

B. Plaintiff

5. CompX is without sufficient information on which to respond to the allegations of paragraph 5 of the Complaint and so denies the same.

6. CompX is without sufficient information on which to respond to the allegations of paragraph 6 of the Complaint and so denies the same.

7. CompX is without sufficient information on which to respond to the allegations of paragraph 7 of the Complaint and so denies the same.

C. Defendants

8. CompX admits that CompX International Inc. is a Delaware corporation with its principal place of business located at 5430 LBJ Freeway, Suite 1700, Dallas, Texas 75240.

9. CompX admits that CompX International Inc. is an importer and distributor of certain adjustable keyboard support systems and components thereof. CompX denies that it is an importer and distributor of certain adjustable keyboard support systems and components thereof that infringe the '097 patent.

10. CompX admits that CompX supplies a variety of products to at least four distributors within the jurisdiction of the Eastern District of Virginia.

11. CompX admits that Waterloo Furniture Component Limited d/b/a/ CompX Waterloo is a wholly-owned Canadian subsidiary of CompX International Inc. with its principal place of business located at 501 Manitou Drive, Kitchener, Ontario, Canada N2C 1L2.

12. CompX admits that the facilities of Waterloo Furniture Components Limited d/b/a/ CompX Waterloo are part of CompX International Inc's furniture component business segment. CompX admits that Waterloo Furniture Components Limited d/b/a/ CompX Waterloo is responsible for manufacturing, selling, distributing, and servicing the CompX ErgonomX line of products, which includes adjustable keyboard support systems and components thereof. CompX denies that any product in the CompX ErgonomX line of products infringes the '097 patent. CompX denies any remaining allegations in paragraph 12 of the Complaint.

III. FACTS AND BACKGROUND

A. The Products at Issue

13. CompX denies the allegations contained in paragraph 13 of the Complaint.

14. CompX admits that CompX manufactures multiple versions of their keyboard support systems with particular needs in mind, such as workspace, angle, and customers' physical attributes.

15. CompX denies the allegations contained in paragraph 15 of the Complaint.

16. CompX denies the allegations contained in paragraph 16 of the Complaint.

B. The Asserted Patent

17. CompX admits that the patent at issue is United States Patent No. 5,292,097 C1, as reexamined ("the '097 patent"), entitled Work Surface Support.

18. CompX admits that from the face of the '097 patent, it appears that the original U.S. Patent No. 5,292,097 patent resulted from Application No. 907,483, filed July 12, 1992 as a continuation-in-part of Application No. 607,448, filed October 31, 1990, now abandoned.

19. CompX admits that from the face of the '097 patent, Edwin R. Russell is the named inventor of U.S. Patent No. 5,292,097. CompX admits that from the face of Exhibit 2, it appears that Softview Computer Products Corp. became the owner of U.S. Patent No. 5,292,097 by assignment from Russell and Trenton PTY Ltd., on May 23, 1998, which was recorded on June 3, 1998 (Reel/Frame 009214/0398). CompX is without sufficient information on which to admit or deny the validity or enforceability of the Agreement attached to the Complaint as part of Exhibit 2 and so denies the same.

20. CompX admits that from the face of Exhibit 3 it appears that Softview Computer Products Corp. changed their company name to Humanscale Corporation, which was signed on August 25, 2000, and filed the Certificate of Amendment of the Certificate of Incorporation with the New York Department of State on January 3, 2001. CompX is without sufficient information on which to admit or deny the validity or enforceability of the Certificate of Amendment attached to the Complaint as part of Exhibit 3 and so denies the same.

21. CompX admits that Exhibit 4, the Reexamination Certificate of the '097 patent shows that a reexamination request was filed on October 13, 2004, with the U.S. Patent and Trademark Office ("USPTO"). CompX is without sufficient information on which to respond to the remaining allegations of the first sentence of paragraph 21 and so denies the same. CompX admits that the face of the reexamination certificate states that as a result of the reexamination, the USPTO cancelled claims 1, 2, 5, 16, 19, 30-33, 39, and 46. CompX admits that the face of the reexamination certificate states that as a result of the reexamination, claims 3, 4, 6, 7, 10, 11, 14, 17, 18, 20, 21, 26, 34, 40-42, and 47 are determined to be patentable as amended. On information and belief, CompX denies that claims 3, 4, 6, 7, 10, 11, 14, 17, 18, 20, 21, 26, 34, 40-42, and 47 are patentable as amended. CompX admits that the face of the

reexamination certificates states that as a result of the reexamination, claims 8, 9, 12, 13, 15, 22-25, 27-29, 35-38, 43-45, and 48-52 dependent on an amended claim, are determined to be patentable. On information and belief, CompX denies that claims 8, 9, 12, 13, 15, 22-25, 27-29, 35-38, 43-45, and 48-52 are patentable.

C. Specific Instances of Importation and Sale

22. CompX denies the allegations contained in paragraph 22 of the Complaint.

23. CompX is without sufficient information to respond to the allegations contained in paragraph 23 of the Complaint and so denies the same.

24. CompX admits that Waterloo Furniture Components Limited d/b/a/ CompX Waterloo operates a manufacturing facility located in Canada that manufactures keyboard support systems and components thereof. CompX denies the remaining allegations of this paragraph.

25. CompX admits that consumers can inquire about the purchase of CompX keyboard support systems through any of multiple U.S. based CompX ErgonomX sales and services representatives, as CompX does not sell directly to the public. CompX avers that the CompX ErgonomX sales representative nearest Virginia is located in Apopka, Florida. Exhibit 5 speaks for itself and CompX denies all conflicting allegations. CompX denies any remaining allegations in paragraph 25.

26. CompX admits that its website indicates that CompX Security Products are available through CompX Security Products distributors located in Virginia. CompX admits that its website indicates that Cabinetmakers Supply, located at 22611 Market Court, Suite 105, Sterling, VA, 20166-6903, (703)-406-3600, is an authorized distributor of CompX Security Products. On information and belief, CompX denies that the authorized CompX Security

Products dealers are authorized to sell CompX ErgonomX Products, including but not limited to CompX ErgonomX keyboard support systems.

27. CompX denies the allegations contained in paragraph 27 of the Complaint.

COUNT ONE – INFRINGEMENT

28. CompX incorporates each of the answers to paragraphs 1-27 of the Complaint above as if fully restated herein.

29. CompX denies the allegations contained in paragraph 29 of the Complaint.

COUNT TWO – CONTRIBUTORY INFRINGEMENT

30. CompX incorporates each of the answers to paragraphs 1-29 of the Complaint above as if fully restated herein.

31. CompX denies the allegations contained in paragraph 31 of the Complaint.

COUNT THREE – WILLFUL INFRINGEMENT

32. CompX incorporates each of the answers to paragraphs 1-31 of the Complaint above as if fully restated herein.

33. CompX denies the allegations of the first sentence contained in paragraph 33 of the Complaint. CompX admits that in September 1998, Softview Computer Products brought suit against Waterloo Furniture Components (now owned by CompX International), alleging patent infringement under 28 U.S.C. § 1338(a) of U.S. Patent No. 5,292,097, in the U.S. District Court for the Southern District of New York. CompX admits that in October 1998, Softview Computer Products brought a second suit against Waterloo Furniture Components (now owned by CompX International), alleging patent infringement under 28 U.S.C. § 1338(a) of U.S. Patent No. 5,292,097, in the U.S. District Court for the Southern District of New York. CompX is

without sufficient information on which to respond to the remaining allegations contained in paragraph 33 and so denies the same.

34. CompX denies the allegations contained in paragraph 34 of the Complaint.

35. CompX denies the allegations contained in paragraph 35 of the Complaint.

DEFENSES

36. The Complaint, in whole or part, fails to state a claim upon which relief may be granted.

AFFIRMATIVE DEFENSES

37. CompX avers that it has not directly, indirectly, contributorily, or willfully infringed any valid claim of the '097 patent.

38. CompX avers that each of the relevant claims of the '097 patent is invalid for failure to meet the requirements of 35 U.S.C. § 101, et. seq., including, but not limited to, sections 102, 103 and 112.

39. CompX avers that Humanscale is barred from asserting the '097 patent against CompX for having engaged in inequitable conduct during the prosecution and/or reexamination of the '097 patent. Humanscale's inequitable conduct includes, but is not limited to, the following instances:

i. On information and belief, Humanscale violated its duty of candor to the United States Patent and Trademark Office when Humanscale claimed small entity status and paid small entity maintenance fees and extension fees during the reexamination process, when Humanscale employed over 500 employees.

ii. On information and belief, in Humanscale's reexamination filings, Humanscale misrepresented the content of Australian Patent Publication AU-B-

65578/90 and that the added material in the U.S. Appl. No. 907,483 (resulting in the '097 Patent) did not constitute new matter from the parent application (U.S. Appl. No. 607,448). On information and belief, neither the Australian Patent Publication AU-B-65578/90 and U.S. Appl. No. 607,448 include explicitly or inherently, the convex V-shaped profile and v-shaped groove included in the '097 Patent and described as embodiment number nine.

iii. On information and belief, Humanscale violated its duty of candor to the United States Patent and Trademark Office when Humanscale failed to notify the United States Patent and Trademark Office of material prior art references to the '097 patent. In support of this affirmative defense, CompX alleges the following:

1. Edwin R. Russell ("Russell") is the named patentee on the '097 patent.
2. The '097 patent issued on March 8, 1994 from U.S. Application Ser. No. 987,403 ("the '403 application"), which was a continuation-in-part of U.S. Application Serial No. 607,448 ("the '448 application").
3. The '097 patent claims priority from Australian Application No. 631,691 (Provisional Specification No. PJ7143) ("the '691 application"). The '691 application was filed in the Australian Patent Office on October 31, 1989.
4. Michael J. Cotterill filed a Notice of Opposition on March 2, 1993 in the Australian Patent Office. In this Notice of Opposition, Mr. Cotterill stated that he opposed the grant of a patent on the Australian '691 application. A copy of this Notice of Opposition is attached as Exhibit A.

5. On April 1, 1993, Mr. Cotterill identified the Grounds for his Opposition, which detailed the reasons why the subject matter of the Australian '691 application was unpatentable. A copy of the Grounds for Opposition is attached as Exhibit B.

6. The Grounds for Opposition identified at least forty-six (46) references, which were prior art to the Australian '691 application and the '097 patent.

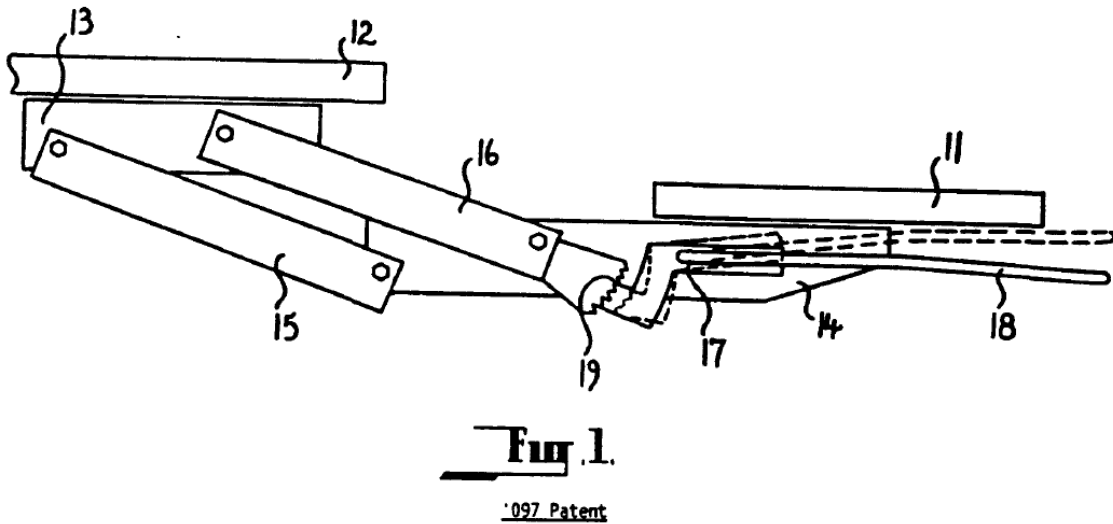
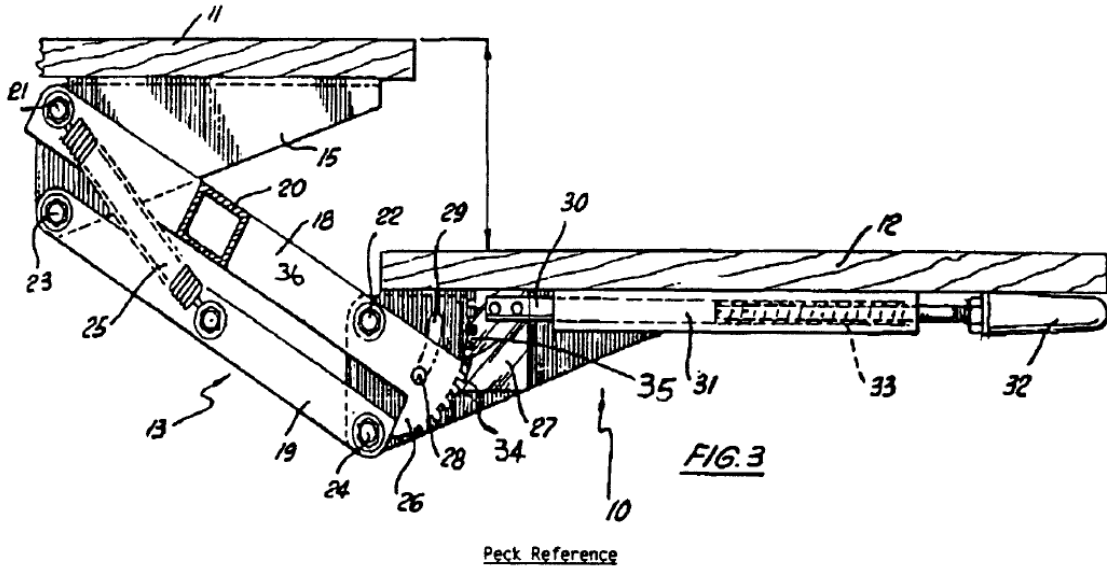
7. Under 37 C.F.R. § 1.56, Russell and every other person who was involved in the preparation or prosecution of the Australian '691 application and the '097 patent, and who was associated with Russell were under a continuing duty to disclose to the PTO all information known to them to be material to patentability.

8. On information and belief, Russell and everyone else with a duty of candor to the PTO violated their continuing duty by, *inter alia*, failing to disclose at least forty-four (44) of the prior art references identified in the Grounds of Opposition.

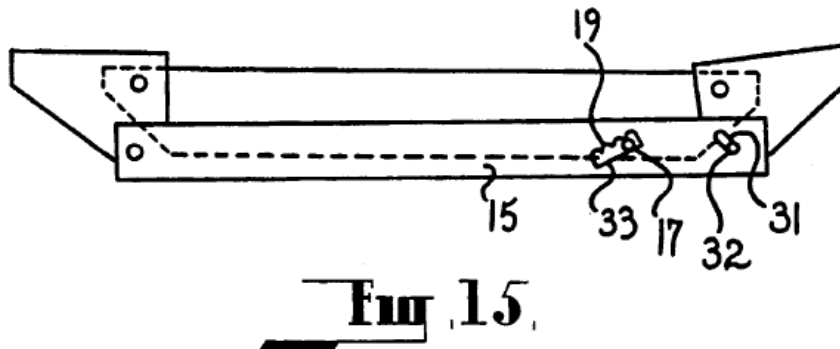
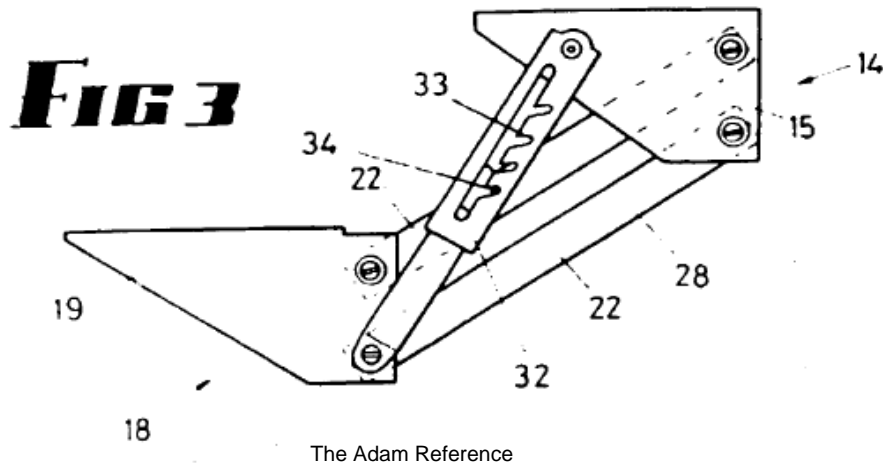
9. On information and belief, this withheld prior art is material to the patentability of the '097 patent and, alone as well as in combination with each other and/or the prior art cited by the PTO, renders each claim in the '097 patent unpatentable.

10. The materiality of the withheld references is exemplified by Australian Application No. 19015/88 to Victor Peck ("the Peck

reference”). Figure 1 of the ‘097 patent and Figure 3 of the Peck reference are set forth below.



11. The materiality of the withheld references is further exemplified by Australian Application No. 75700/87 to Uwe Adam and Uli Gailus (“the Adam reference”). Figure 15 of the ‘097 patent and Figure 3 of the Adam reference are set forth below.



12. On information and belief, Russell and/or those with a continuing duty of candor to the PTO under 37 C.F.R. § 1.56 knew that the withheld references (i) were not cumulative of the references submitted to the PTO, and (ii) were material to the patentability of the '097 patent.

13. On information and belief, the deceptive intent of Russell and/or those with a continuing duty of candor to the PTO under 37 C.F.R. § 1.56 is evidenced, *inter alia*, by the facts that the withheld references: were known by Russell in 1993 (prior to the issuance of the '097 patent), were clearly material, and were not disclosed to the PTO until the

reexamination request in 2004. Russell's deceptive intent is further evidenced by the fact that he buried the plainly material references within approximately 900 pages of documents submitted to the United States Patent and Trademark Office without informing the patent Examiner of the significance.

14. On information and belief, by the above acts, Russell and/or those with a continuing duty of candor to the PTO under 37 C.F.R. § 1.56 violated their duty. Consequently, each claim in the '097 patent is unenforceable.

iv. On information and belief, Humanscale violated their duty of candor to the United States Patent and Trademark Office when Humanscale failed to notify the United States Patent and Trademark Office of material prior art references to the '097 patent. In support of this affirmative defense, CompX alleges the following:

1. During prosecution of the Australian application, the Australian Patent Office sent an "Examiner's first report" to Russell's Australian attorney on June 23, 1992 (the "Australian Examiner's first report"), during the pendency of the '448 application in the U.S. A copy of this Australian Examiner's first report is attached as Exhibit C.

2. The Australian Examiner's first report stated that the invention was "not novel" in light of the following prior art references, among others: Australian Patent Application AU 28074/84; Australian Patent No. 563463; and German Patent No. DE 880794 (the "withheld Australian references"), which were: (a) prior art to the Australian application; (b)

were prior art to the '097 patent; and (c) were not cited during prosecution of the '097 patent.

3. Under 37 C.F.R. § 1.56, Russell and every other person who was involved in the preparation or prosecution of the Australian application and the '097 patent, and who was associated with Russell were under a continuing duty to disclose to the PTO all information known to them to be material to patentability.

4. On information and belief, Russell and everyone else with a duty of candor to the PTO violated their continuing duty by failing to disclose to the PTO the withheld Australian references.

5. On information and belief, these withheld Australian references are material to the patentability of the '097 patent and, alone as well as in combination with each other and/or the prior art cited by the PTO, renders each claim in the '097 patent unpatentable. Further, these withheld Australian references are not cumulative of the art cited during the prosecution of the '097 patent.

6. The fact that the withheld Australian references were material and not cumulative of the art cited during prosecution of the '097 patent is exemplified by the fact that the Australian examiner considered the invention of the Australian application as being not novel in light of the withheld Australian references.

7. On information and belief, Russell and/or those with a continuing duty of candor to the PTO under 37 C.F.R. § 1.56 knew that the withheld

Australian references (i) were not cumulative of the references submitted to the PTO, and (ii) were material to the patentability of the '097 patent.

8. On information and belief, the deceptive intent of Russell and/or those with a continuing duty of candor to the PTO under 37 C.F.R. § 1.56 is evidenced by the facts that the withheld Australian references: were known by Russell, were clearly material, and were not disclosed to the PTO.

9. On information and belief, by the above acts, Russell and/or those with a continuing duty of candor to the PTO under 37 C.F.R. § 1.56 violated their duty. Consequently, each claim in the '097 patent is unenforceable.

v. On information and belief, Humanscale violated their duty of candor to the United States Patent and Trademark Office when Humanscale failed to notify the United States Patent and Trademark Office of material prior art references to the '097 patent. In support of this affirmative defense, CompX alleges the following:

1. During the pendency of the '483 application, Russell, through his Australian attorney, filed PCT Application No. PCT/AU93/00264 on June 3, 1993 (the "PCT application"). In response to the PCT application, an International Search Report was mailed by the International Search Authority on August 18, 1993 (the "PCT search report"), also during the pendency of the '483 application. Copies of this PCT application and this PCT search report are attached as Exhibit D.

2. The PCT application described and claimed subject matter essentially identical to subject matter described and claimed as new matter (relative to the '448 application) in the '483 application.

3. The PCT search report stated that the invention described and claimed in the PCT application "cannot be considered novel or cannot be considered to involve an inventive step" in light of the Peck reference, and that the invention "cannot be considered to involve an inventive step [and is] obvious to a person skilled in the art" in light of combinations of the following prior art references: Australian Patent Nos. 631691; 637320; 635803; U.S. Patent No. 2,001,507; and Soviet Union Patent No. 648200 (collectively, the "withheld PCT references"). The withheld PCT references were: (a) prior art to the PCT application; (b) were prior art to the '097 patent; and (c) were not cited during prosecution of the '097 patent.

4. Under 37 C.F.R. § 1.56, Russell and every other person who was involved in the preparation or prosecution of the PCT application and the '097 patent, and who was associated with Russell were under a continuing duty to disclose to the PTO all information known to them to be material to patentability.

5. On information and belief, Russell and everyone else with a duty of candor to the PTO violated their continuing duty by failing to disclose to the PTO the PCT references identified in the PCT search report.

6. On information and belief, these withheld PCT references are material to the patentability of the '097 patent and, alone as well as in combination with each other and/or the prior art cited by the PTO, renders each claim in the '097 patent unpatentable. Further, these withheld PCT references are not cumulative of the art cited during the prosecution of the '097 patent.

7. The fact that the withheld PCT references were material and not cumulative of the art cited during prosecution of the '097 patent is exemplified by the fact that the International Search Authority considered the invention of the PCT application as being not novel in light of the withheld PCT references. Additionally, the materiality of the Peck references is especially clear because it was cited by both Mr. Cotterill in his Grounds for Opposition against the Australian application and by the International Search Authority in the PCT search report.

8. On information and belief, Russell and/or those with a continuing duty of candor to the PTO under 37 C.F.R. § 1.56 knew that the withheld PCT references (i) were not cumulative of the references submitted to the PTO, and (ii) were material to the patentability of the '097 patent.

9. On information and belief, the deceptive intent of Russell and/or those with a continuing duty of candor to the PTO under 37 C.F.R. § 1.56 is evidenced, by the facts that the withheld PCT references: were known by Russell, were clearly material, and were not disclosed to the PTO.

10. On information and belief, by the above acts, Russell and/or those with a continuing duty of candor to the PTO under 37 C.F.R. § 1.56 violated their duty. Consequently, each claim in the '097 patent is unenforceable.

40. CompX avers that Humanscale's claims are barred by the doctrines of laches and/or estoppel.

41. CompX avers that Humanscale is barred from asserting infringement of the '097 patent in view of prosecution history estoppel during the prosecution of the '097 patent and reexamination of the '097 patent and further as a matter of law in view of definitions for the scope and meaning of claim terms and limitations.

42. CompX avers that Humanscale is barred from recovering damages under 35 U.S.C. § 286 for any alleged infringement that occurred more than six years prior to the commencement of this action.

WHEREFORE, CompX respectfully requests that this Court enter an Order and Judgment in its favor, and against Humanscale, on its cause of action, and:

- b. Dismiss Humanscale's claims with prejudice;
- c. Declare that CompX has not infringed the '097 patent;
- d. Declare the '097 patent invalid;
- e. Declare the '097 patent unenforceable;
- f. Award CompX their costs and attorney's fees incurred in this actions; and
- g. Grant or award such further and additional relief as the Court shall deem just and proper.

COUNTERCLAIMS

For its counterclaims against Plaintiff-Counter Defendant Humanscale, CompX states as follows:

NATURE OF THE ACTION

Defendant-Counter Plaintiff CompX International Inc. and Waterloo Furniture Components Limited d/b/a/ CompX Waterloo bring an action against Plaintiff-Counter Defendant Humanscale for patent infringement.

PARTIES

1. CompX International Inc. is a Delaware corporation with its principal place of business located at 5430 LBJ Freeway, Suite 1700, Dallas, Texas 75240.

2. Waterloo Furniture Components Limited d/b/a/ CompX Waterloo is a wholly-owned Canadian subsidiary of CompX International Inc. with its principal place of business located at 501 Manitou Drive, Kitchener, Ontario, Canada N2C 1L2.

3. Upon information and belief, Humanscale Corporation is a New York corporation with its principal place of business located at 11 East 26th Street, 8th floor, New York, New York 10010.

4. Upon information and belief, Humanscale Corporation was formerly known as Softview Computer Products Corporation.

JURISDICTION AND VENUE

5. This court has jurisdiction over the subject matter of this action pursuant to 28 USC §§ 1331, 1338, 1367, 2201, and 2202. Plaintiff-Counter Defendant Humanscale is subject to personal jurisdiction in this judicial district based on its regular conduct of business within the district, because it sold products in this judicial district, and because it invoked the jurisdiction of

the Court in bringing its action against CompX International Inc. and CompX Waterloo. On information and belief, consumers can purchase keyboard trays from authorized Humanscale retailers in the Eastern District of Virginia, including, but not limited to, Relax the Back #78, Princess Anne Plaza West, 3415 Virginia Beach Blvd., Virginia Beach, VA 23452.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) based on Humanscale's sale of infringing products within the district and based on its regular conduct of business within the district. On information and belief, consumers can purchase keyboard trays from authorized Humanscale retailers in the Eastern District of Virginia, including, but not limited to, Relax the Back #78, Princess Anne Plaza West, 3415 Virginia Beach Blvd., Virginia Beach, VA 23452.

COUNT I – DECLARATORY JUDGMENT FOR NON-INFRINGEMENT

7. CompX realleges and incorporates by reference each of the allegations of paragraphs 1 through 6 of its Counterclaim above.

8. Humanscale alleges that CompX infringes the '097 patent.

9. CompX has not infringed and does not infringe, directly or indirectly, literally or under the doctrine of equivalents, any valid claim of the '097 patent.

10. A declaration by this Court establishing CompX's non-infringement of Humanscale's asserted '097 patent is reasonably calculated to prevent needless additional litigation in this jurisdiction between CompX and Humanscale.

COUNT II - DECLARATORY JUDGMENT OF INVALIDITY OF THE '097 PATENT

11. CompX realleges and incorporates by reference each of the allegations of paragraphs 1 through 10 of its Counterclaim above.

12. The '097 patent is invalid under one or more of the provisions in Title 35 of the United States Code, including §§ 102, 103, and 112.

13. A declaration by this Court establishing that Humanscale's asserted '097 patent are invalid is reasonably calculated to prevent needless additional litigation in this jurisdiction between CompX and Humanscale.

**COUNT III – DECLARATORY JUDGMENT OF
UNENFORCEABILITY OF THE '097 PATENT**

14. CompX realleges and incorporates by reference each of the allegations of paragraphs 1 through 13 of its Counterclaim above.

15. The '097 patent is unenforceable against CompX for Humanscale's inequitable conduct against the United States Patent and Trademark Office during the prosecution and/or reexamination of the '097 patent. The inequitable conduct includes, but is not limited to the following instances:

- i. On information and belief, Humanscale violated their duty of candor to the United States Patent and Trademark Office when Humanscale claimed small entity status and paid small entity maintenance fees and extension fees during the reexamination process, when Humanscale employed over 500 employees.
- ii. On information and belief, in Humanscale's reexamination filings, Humanscale misrepresented the content of Australian Patent Publication AU-B-65578/90 and that the added material in the U.S. Appl. No. 907,483 (resulting in the '097 Patent) did not constitute new matter from the parent application (U.S. Appl. No. 607,448). On information and belief, neither the Australian Patent Publication AU-B-65578/90 nor U.S. Appl. No. 607,448 include, explicitly or

inherently, the convex V-shaped profile and v-shaped groove included in the '097 Patent and described as embodiment number nine.

iii. On information and belief, Humanscale violated their duty of candor to the United States Patent and Trademark Office when Humanscale failed to notify the United States Patent and Trademark Office of material prior art references to the '097 patent. In further support of this claim, CompX alleges the following:

1. Edwin R. Russell ("Russell") is the named patentee on the '097 patent.

2. The '097 patent issued on March 8, 1994 from U.S. Application Ser. No. 987,403 ("the '403 application"), which was a continuation-in-part of U.S. Application Serial No. 607,448 ("the '448 application").

3. The '097 patent claims priority from Australian Application No. 631,691 (Provisional Specification No. PJ7143) ("the '691 application"). The '691 application was filed in the Australian Patent Office on October 31, 1989.

4. Michael J. Cotterill filed a Notice of Opposition on March 2, 1993 in the Australian Patent Office. In this Notice of Opposition, Mr. Cotterill stated that he opposed the grant of a patent on the Australian '691 application. A copy of this Notice of Opposition is attached as Exhibit A.

5. On April 1, 1993, Mr. Cotterill identified the Grounds for his Opposition, which detailed the reasons why the subject matter of the Australian '691 application was unpatentable. A copy of the Grounds for Opposition is attached as Exhibit B.

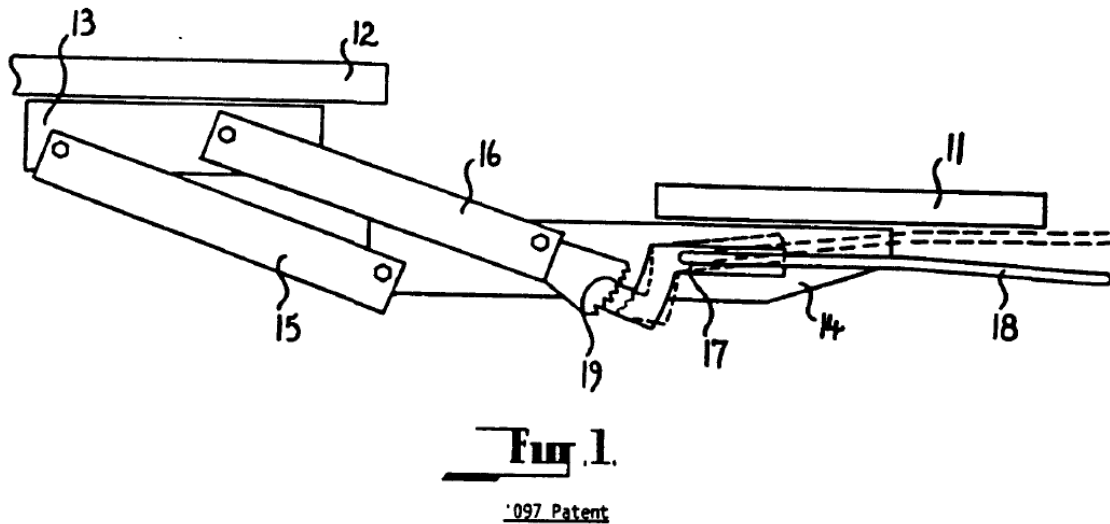
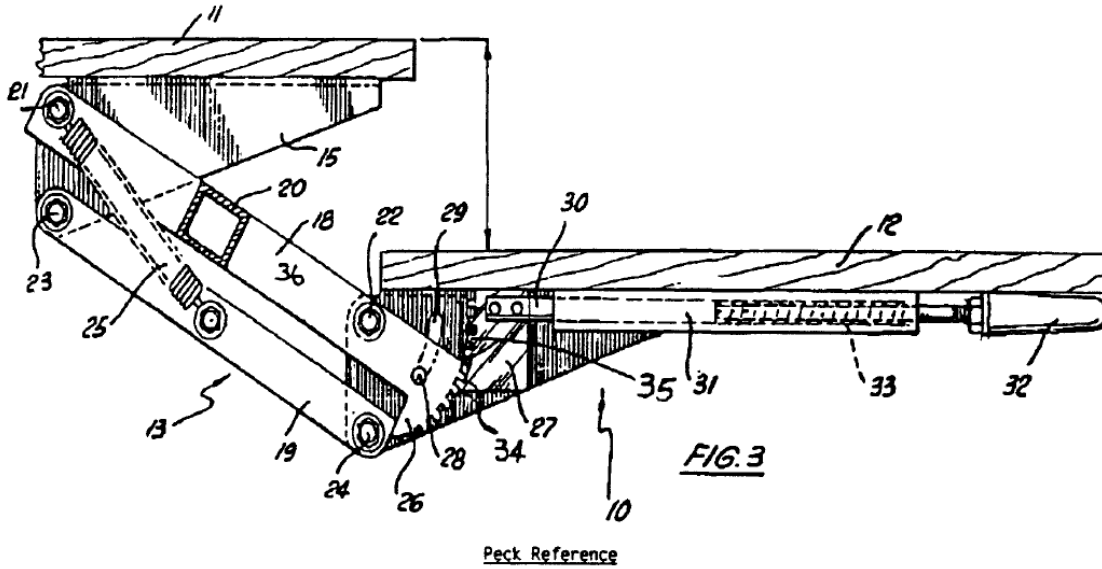
6. The Grounds for Opposition identified at least forty-six (46) references, which were prior art to the Australian '691 application and the '097 patent.

7. Under 37 C.F.R. § 1.56, Russell and every other person who was involved in the preparation or prosecution of the Australian '691 application and the '097 patent and who was associated with Russell, were under a continuing duty to disclose to the PTO all information known to them to be material to patentability.

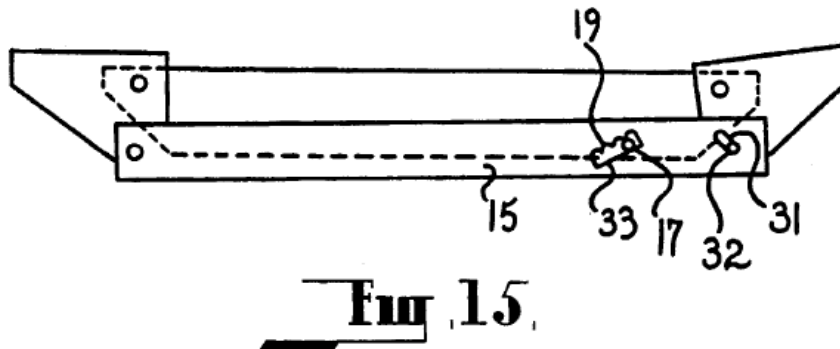
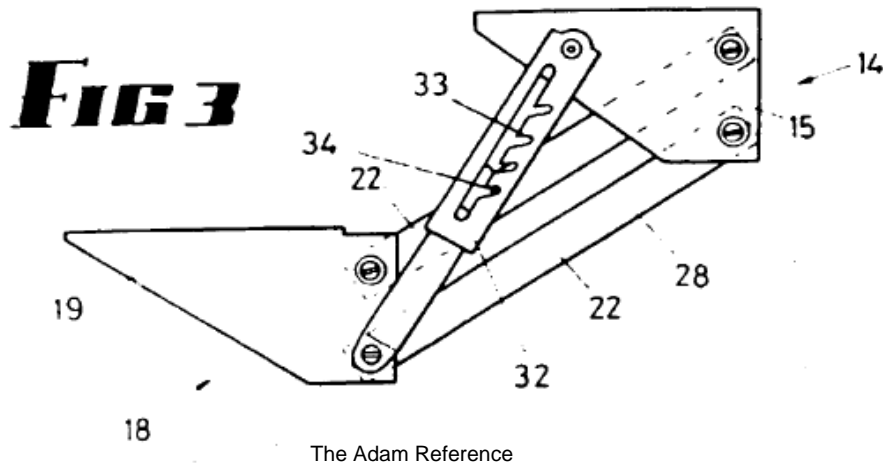
8. On information and belief, Russell and everyone else with a duty of candor to the PTO violated their continuing duty by, *inter alia*, failing to disclose at least forty-four (44) of the prior art references identified in the Grounds of Opposition.

9. On information and belief, this withheld prior art is material to the patentability of the '097 patent and, alone as well as in combination with each other and/or the prior art cited by the PTO, renders each claim in the '097 patent unpatentable.

10. The materiality of the withheld references is exemplified by Australian Application No. 19015/88 to Victor Peck ("the Peck reference"). Figure 1 of the '097 patent and Figure 3 of the Peck reference are set forth below.



11. The materiality of the withheld references is further exemplified by Australian Application No. 75700/87 to Uwe Adam and Uli Gailus (“the Adam reference”). Figure 15 of the ‘097 patent and Figure 3 of the Adam reference are set forth below.



12. On information and belief, Russell and/or those with a continuing duty of candor to the PTO under 37 C.F.R. § 1.56 knew that the withheld references (i) were not cumulative of the references submitted to the PTO, and (ii) were material to the patentability of the '097 patent.

13. On information and belief, the deceptive intent of Russell and/or those with a continuing duty of candor to the PTO under 37 C.F.R. § 1.56 is evidenced, *inter alia*, by the facts that the withheld references: were known by Russell in 1993 (prior to the issuance of the '097 patent), were clearly material, and were not disclosed to the PTO until the

reexamination request in 2004. Russell's deceptive intent is further evidenced by the fact that he buried the plainly material references within approximately 900 pages of documents submitted to the United States Patent and Trademark Office without informing the patent Examiner of the significance.

14. On information and belief, by the above acts, Russell and/or those with a continuing duty of candor to the PTO under 37 C.F.R. § 1.56 violated their duty. Consequently, each claim in the '097 patent is unenforceable.

iv. On information and belief, Humanscale violated their duty of candor against the United States Patent and Trademark Office when Humanscale failed to notify the United States Patent and Trademark Office of material prior art references to the '097 patent. In further support of this claim, CompX alleges the following:

1. During prosecution of the Australian application, the Australian Patent Office sent an "Examiner's first report" to Russell's Australian attorney on June 23, 1992 (the "Australian Examiner's first report"), during the pendency of the '448 application in the U.S. A copy of this Australian Examiner's first report is attached as Exhibit C.

2. The Australian Examiner's first report stated that the invention was "not novel" in light of the following prior art references, among others: Australian Patent Application AU 28074/84; Australian Patent No. 563463; and German Patent No. DE 880794 (the "withheld Australian

references”), which were: (a) prior art to the Australian application; (b) were prior art to the ‘097 patent; and (c) were not cited during prosecution of the ‘097 patent.

3. Under 37 C.F.R. § 1.56, Russell and every other person who was involved in the preparation or prosecution of the Australian application and the ‘097 patent, and who was associated with Russell were under a continuing duty to disclose to the PTO all information known to them to be material to patentability.

4. On information and belief, Russell and everyone else with a duty of candor to the PTO violated their continuing duty by failing to disclose to the PTO the withheld Australian references.

5. On information and belief, these withheld Australian references are material to the patentability of the ‘097 patent and, alone as well as in combination with each other and/or the prior art cited by the PTO, renders each claim in the ‘097 patent unpatentable. Further, these withheld Australian references are not cumulative of the art cited during the prosecution of the ‘097 patent.

6. The fact that the withheld Australian references were material and not cumulative of the art cited during prosecution of the ‘097 patent is exemplified by the fact that the Australian examiner considered the invention of the Australian application as being not novel in light of the withheld Australian references.

7. On information and belief, Russell and/or those with a continuing duty of candor to the PTO under 37 C.F.R. § 1.56 knew that the withheld Australian references (i) were not cumulative of the references submitted to the PTO, and (ii) were material to the patentability of the '097 patent.

8. On information and belief, the deceptive intent of Russell and/or those with a continuing duty of candor to the PTO under 37 C.F.R. § 1.56 is evidenced, by the facts that the withheld Australian references: were known by Russell, were clearly material, and were not disclosed to the PTO.

9. On information and belief, by the above acts, Russell and/or those with a continuing duty of candor to the PTO under 37 C.F.R. § 1.56 violated their duty. Consequently, each claim in the '097 patent is unenforceable.

v. On information and belief, Humanscale violated their duty of candor against the United States Patent and Trademark Office when Humanscale failed to notify the United States Patent and Trademark Office of material prior art references to the '097 patent. In further support of this claim, CompX alleges the following:

1. During the pendency of the '483 application, Russell, through his Australian attorney, filed PCT Application No. PCT/AU93/00264 on June 3, 1993 (the "PCT application"). In response to the PCT application, an International Search Report was mailed by the International Search Authority on August 18, 1993 (the "PCT search report"), also during the

pendency of the '483 application. Copies of this PCT application and this PCT search report are attached as Exhibit D.

2. The PCT application described and claimed subject matter essentially identical to subject matter described and claimed as new matter (relative to the '448 application) in the '483 application.

3. The PCT search report stated that the invention described and claimed in the PCT application "cannot be considered novel or cannot be considered to involve an inventive step" in light of the Peck reference, and that the invention "cannot be considered to involve an inventive step [and is] obvious to a person skilled in the art" in light of combinations of the following prior art references: Australian Patent Nos. 631691; 637320; 635803; U.S. Patent No. 2,001,507; and Soviet Union Patent No. 648200 (collectively, the "withheld PCT references"). The withheld PCT references were: (a) prior art to the PCT application; (b) were prior art to the '097 patent; and (c) were not cited during prosecution of the '097 patent.

4. Under 37 C.F.R. § 1.56, Russell and every other person who was involved in the preparation or prosecution of the PCT application and the '097 patent, and who was associated with Russell were under a continuing duty to disclose to the PTO all information known to them to be material to patentability.

5. On information and belief, Russell and everyone else with a duty of candor to the PTO violated their continuing duty by failing to disclose to the PTO the PCT references identified in the PCT search report.

6. On information and belief, these withheld PCT references are material to the patentability of the '097 patent and, alone as well as in combination with each other and/or the prior art cited by the PTO, renders each claim in the '097 patent unpatentable. Further, these withheld PCT references are not cumulative of the art cited during the prosecution of the '097 patent.

7. The fact that the withheld PCT references were material and not cumulative of the art cited during prosecution of the '097 patent is exemplified by the fact that the International Search Authority considered the invention of the PCT application as being not novel in light of the withheld PCT references. Additionally, the materiality of the Peck references is especially clear because it was cited by both Mr. Cotterill in his Grounds for Opposition against the Australian application and by the International Search Authority in the PCT search report.

8. On information and belief, Russell and/or those with a continuing duty of candor to the PTO under 37 C.F.R. § 1.56 knew that the withheld PCT references (i) were not cumulative of the references submitted to the PTO, and (ii) were material to the patentability of the '097 patent.

9. On information and belief, the deceptive intent of Russell and/or those with a continuing duty of candor to the PTO under 37 C.F.R. § 1.56

is evidenced, by the facts that the withheld PCT references: were known by Russell, were clearly material, and were not disclosed to the PTO.

10. On information and belief, by the above acts, Russell and/or those with a continuing duty of candor to the PTO under 37 C.F.R. § 1.56 violated their duty. Consequently, each claim in the '097 patent is unenforceable.

COUNT IV – INFRINGEMENT OF U.S. PAT. NO. 5,037,054

16. CompX realleges and incorporates by reference each of the allegations of paragraphs 1 through 15 of its Counterclaim above

17. Waterloo Furniture Components Limited d/b/a/ CompX Waterloo is the owner by assignment of United States Patent No. 5,037,054 (hereinafter “the ‘054 Patent”), entitled “Adjustable Support Mechanism for a Keyboard Platform,” a copy of which is attached hereto as Exhibit E. The ‘054 Patent was duly and lawfully issued by the United States Patent and Trademark Office on August 6, 1991.

18. Humanscale manufactures, imports, uses, sells, and/or offers for sale products or services throughout the United States that infringe one or more claims of the ‘054 Patent literally or under the doctrine of equivalents.

19. Humanscale, by its acts, induces others to infringe one or more claims of the ‘054 Patent.

20. Humanscale, by its acts, contributes to the infringement by others of the ‘054 Patent.

21. CompX has been irreparably harmed and monetarily damaged by Humanscale’s infringement of the ‘054 Patent. The harm and monetary damage include, but are not limited to,

lost profits, price erosion, and lost sales related to affiliated products, as a result of Humanscale's infringement. If Humanscale infringement is not permanently enjoined, CompX will continue to be irreparably harmed and monetarily damaged.

22. Humanscale's infringement of the '054 Patent is deliberate and willful. This is an exceptional case warranting an award of treble damages to CompX under 35 U.S.C. § 284 and an award of its reasonable attorneys' fees and costs for the maintenance of this action under 35 U.S.C. § 285.

COUNT V – INFRINGEMENT OF U.S. PAT. NO. 5,257,767

23. CompX realleges and incorporates by reference each of the allegations of paragraphs 1 through 22 of its Counterclaim above

24. Waterloo Furniture Components Limited d/b/a/ CompX Waterloo is the owner by assignment of United States Patent No. 5,257,767 (hereinafter "the '767 Patent"), entitled "Adjustable Support Mechanism for a Keyboard Platform," a copy of which is attached hereto as Exhibit F. The '767 Patent was duly and lawfully issued by the United States Patent and Trademark Office on November 2, 1993.

25. Humanscale manufactures, imports, uses, sells, and/or offers for sale products or services throughout the United States that infringe on one or more claims of the '767 Patent literally or under the doctrine of equivalents.

26. Humanscale, by its acts, induces others to infringe one or more claims of the '767 Patent.

27. Humanscale, by its acts, contributes to the infringement by others of the '767 Patent.

28. CompX has been irreparably harmed and monetarily damaged by Humanscale's infringement of the '767 Patent. The harm and monetary damage include, but are not limited to, lost profits, price erosion, and lost sales related to affiliated products, as a result of Humanscale's infringement. If Humanscale infringement is not permanently enjoined, CompX will continue to be irreparably harmed and monetarily damaged.

29. Humanscale's infringement of the '767 Patent is deliberate and willful. This is an exceptional case warranting an award of treble damages to CompX under 35 U.S.C. § 284 and an award of its reasonable attorneys' fees and costs for the maintenance of this action under 35 U.S.C. § 285

PRAYER FOR RELIEF

WHEREFORE, Defendant-Counter Plaintiff CompX respectfully requests that this Court enter an Order and Judgment in its favor, and against Plaintiff-Counter Defendant Humanscale on its cause of action, and:

- A. Dismiss Humanscale's Complaint, in its entirety, with prejudice and denying the relief sought in its claims;
- B. Enter a declaratory judgment that CompX does not infringe the '097 patent;
- C. Enter a declaratory judgment that the '097 patent is invalid;
- D. Enter a declaratory judgment that the '097 patent is unenforceable;
- E. Enter judgment that Plaintiff-Counter Defendant Humanscale has infringed the '054 Patent;
- F. Enter judgment that Humanscale's infringement of the '054 Patent is willful;
- G. Award damages for infringement of the '054 Patent, including, but not limited to, lost profits, price erosion, lost sales related to affiliated products, and pre- and post-judgment

interest on damages awarded to CompX;

H. Award treble damages for willful infringement of the '054 Patent;

I. Permanently enjoin Humanscale from infringing the '054 Patent;

J. Enter judgment that Plaintiff-Counter Defendant Humanscale has infringed the '767 Patent;

K. Enter judgment that Humanscale's infringement of the '767 Patent is willful;

L. Award damages for infringement of the '767 Patent, including, but not limited to, lost profits, price erosion, lost sales related to affiliated products, and pre- and post-judgment interest on damages awarded to CompX;

M. Award treble damages for willful infringement of the '767 Patent;

N. Permanently enjoin Humanscale from infringing the '767 Patent;

O. Enter judgment that this is an exceptional case under 35 U.S.C. § 285 warranting an award of CompX's attorneys' fees;

P. Award costs for this lawsuit; and

Q. Award such other and further relief as it may deem just and proper.

JURY DEMAND

Defendants demand a trial by jury of all matters to which they are entitled to a trial by jury pursuant to Fed. R. Civ. P. 38.

Dated: March 27, 2009

Respectfully submitted,

/s/

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Attorneys for CompX International Inc. and
CompX Waterloo

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of March, 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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_____/s/
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