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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**Portland Division**

**ROBERT M. LYDEN,**  
an individual,

Case No. 3:13-CV-00662-HZ

**Plaintiff,**

**v.**

**NIKE, INC.,**  
an Oregon Corporation, and

**SECOND AMENDED  
COMPLAINT FOR:**

**PATENT INFRINGEMENT;  
CONVERSION;  
FRAUD; AND,  
UNFAIR COMPETITION,  
BUSINESS, AND TRADE  
PRACTICES / RICO**

**MARK PARKER,**  
CEO of Nike, Inc.,  
An Individual, and

**PHILLIP KNIGHT,**  
Co-Founder of Nike, Inc.,  
and Principle Shareholder,  
An Individual,

**Defendants.**

**DEMAND FOR JURY TRIAL**

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For his complaint against Nike, Inc., Plaintiff Robert M. Lyden (“Plaintiff” or “Lyden”), states and alleges, as follows:

### **NATURE OF THE CASE**

1. This is a patent infringement lawsuit brought under the patent laws of the United States, including 35 U.S.C. §§ 271, 281, 283-85.

2. In addition, this is an unfair competition and unlawful business, trade practices lawsuit arising under common law, and including ORS § 646.607, 646.608, and 646.638, but also ORS § 166.720, RICO.

### **THE PARTIES**

3. Robert M. Lyden is a private individual having a residence at 18261 S.W. Fallatin Loop, Aloha, Oregon 97007, in the United States.

4. Nike, Inc. is a corporation organized under the laws of the State of Oregon, having its World Headquarters and principle place of business at One Bowerman Drive, Beaverton, Oregon 97005, in the United States.

5. Mr. Mark Parker is the CEO of Nike, Inc., and an individual whose principle place of employment is Nike, Inc. located at One Bowerman Drive, Beaverton, Oregon 97005, in the United States, and a resident of the greater metropolitan area of Portland, Oregon.

6. Mr. Phillip Knight is the Co-Founder of Nike, Inc., and the principle shareholder fo Nike, Inc., whose principle place of employment is Nike, Inc. located at One Bowerman Drive, Beaverton, Oregon 97005, and a resident of Hillsboro, Oregon.

## **JURISDICTION AND VENUE**

7. This action arises under the patent laws of the United States, including 35 U.S.C. §§ 101 et seq. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, and 1338(a).

8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400 and the Defendants Nike, Inc., Mark Parker, and Phillip Knight (also “Defendants”) are subject to personal jurisdiction in this Court because Defendants conduct substantial business in this judicial district including: (i) regularly doing or soliciting business, engaging in other persistent courses of conduct, and /or deriving substantial revenue from goods and services provided to individuals in Oregon and in this Judicial District; and (ii) committing acts of patent infringement and/or contributing to or inducing acts of patent infringement by others in this Judicial District (and elsewhere in Oregon and the United States).

9. Assignment of this case to the Portland Division is proper because a substantial part of the events giving rise to the claims alleged in this action occurred in the Portland Division.

## **FACTUAL BACKGROUND**

### **(Lyden and Nike, Inc. Prior to May, 1990)**

10. Lyden hereby realleges and incorporates by reference paragraphs 1-9, inclusive, as though fully set forth herein.

11. Plaintiff Robert M. Lyden (“Lyden”) has a history as a coach, educator, and innovator. Lyden received dual Masters’ Degrees in History and Public Administration from the University of Minnesota in 1982 and 1988.

12. Lyden also filed several patent applications and worked as an independent inventor between March, 1985 and May, 1990.

13. Between May, 1989 and May, 1990, Lyden approached and disclosed to Nike, Inc. several of Lyden’s inventions, and these were later excluded from Nike, Inc.’s ownership under the terms of Lyden’s “Employee Invention And Secrecy Agreement” executed on August 8, 1990.

14. In May, 1989, Lyden disclosed to Nike, Inc. as an independent inventor the three dimensional shoe upper design and pattern shown in a photo which was taken with a copy of “The Minnesota Daily” newspaper dated May 8, 1989, attached hereto as **Exhibit C**, and shortly afterwards Lyden was informed by Mr. Dan Potter that the shoe upper pattern had been seen by Nike, Inc.’s lead designer, Mr. Tinker Hatfield, and also that he liked it.

15. Between August 31, 1989 and May, 1990, Lyden disclosed to Nike, Inc. a disclosure for a speedsuit relating to track & field entitled “Aerodynamic Athletic Apparel Background For U.S. Patent Application And / OR Trademark Protection,” dated August 31, 1989, attached hereto as **Exhibit D**.

16. In 1990, given Lyden’s demonstrated knowledge of athletics, footwear and patents, Potter invited Lyden to apply for a position opening in the patents department at Nike, Inc.

**Factual Background, Continued**

**(Lyden and Nike, Inc. May, 1990 –September 9, 1996)**

17. Lyden hereby realleges and incorporates by reference paragraphs 1-16, inclusive, as though fully set forth herein.

18. Lyden was hired by Nike, Inc. as “Patents and Inventions Assistant” to assist Potter in Nike, Inc.’s patent department in May, 1990, and Lyden worked as a regular employee for Nike, Inc. at its world headquarters located in Beaverton, Oregon until September 9, 1996.

19. Mark Parker was the Corporate Vice-President with oversight of the Design and Research & Development Group, and later the General Manager of Nike, Inc. during the time Lyden worked as a regular employee for Nike, Inc.

20. In July, 1990, Lyden was assigned to gather information for a design patent for a shoe upper which was named the HUARCHE by Nike, Inc. designer Mr. Tinker Hatfield. The shoe upper designs of Hatfield relating to the so-called HUARCHE style athletic shoes were later the subject of several U.S. Design Patents, e.g., U.S. Design 322,505, attached hereto as **Exhibit E**, which resembles the three dimensional shoe upper design of Lyden shown in **Exhibit C**.

21. Many so-called HUARACHE style athletic footwear were later made by Nike, Inc. and commercially successful. Hatfield received a national design award for the HUARACHE shoe design.

22. Between May, 1990 and September 9, 1996, Lyden assisted both Nike, Inc.’s in-house and external patent counsel in numerous patent litigations. In the course of the litigation “Wolverine World Wide, Inc. and Brooks Shoes, Inc., vs. Nike, Inc.,” Civil

Action No. 1:92-cv-886, which concerned the HUARACHE style shoe upper, a former member of Nike, Inc.'s patent department found Hatfield's original drawing relating to the photocopy which had been backdated to January 13, 1989 in Lyden's presence, but it was actually drawn on an oversized board dated June 13, 1989, thus after the date of Lyden's submission to Nike, Inc. in May, 1989. It was then apparent that a misappropriation of Lyden's design and invention had taken place.

23. Nike, Inc. needed to have actual ownership of the HUARACHE upper design because the company had sold and continued to sell millions of dollars of HUARACHE style footwear products, and so Lyden proposed to Nike, Inc. in-house patent counsel that Nike, Inc. simply pay him for one season of design work at Hatfield's level of compensation. Nike, Inc. delayed but eventually agreed to Lyden's suggestion and the result was the "Intellectual Property License Agreement" dated December 19, 1997, attached hereto as **Exhibit F**.

24. As part of the "Intellectual Property Agreement," **Exhibit F**, Lyden also granted to Nike, Inc. a non-exclusive license agreement to the invention and know-how associated with the aerodynamic apparel disclosure of Lyden made in August, 1989, **Exhibit D**, should Nike, Inc. possibly choose to make such aerodynamic apparel in the future.

25. Between May, 1990 and September, 1996, besides assisting Nike, Inc.'s in-house and external patent counsel, Lyden also made contributions to Nike, Inc.'s research and development efforts. As a result, Lyden is a named inventor on four design patents and fourteen utility patents assigned to Nike, Inc.

26. As discussed in paragraph nine of Lyden's letter to Nike, Inc.'s in-house patent counsel Mr. James Niegowski dated April 21, 2010, which is attached hereto as **Exhibit Q**, Lyden had suggested and made drawings resembling the later commercialized Nike, Inc. FREE athletic shoe during the time Lyden served an employee and consultant to Nike, Inc. between May, 1990 – September 9, 1998, e.g., an outsole design by Lyden resembling the FREE is attached hereto as **Exhibit Z**.

27. However, when Nike, Inc. later filed for utility patents relating to the FREE athletic shoe Lyden was not recited as one of the named inventors, and more importantly, Nike, Inc. did not disclose to the patent examiner its own most relevant prior art patents, e.g., U.S. 5,384,973 by Lyden entitled "Sole With Articulated Forefoot," attached hereto as **Exhibit EE**. Nike, Inc. has since obtained several patents which relate to FREE athletic shoes, but withheld relevant prior art information during the prosecution of these patents and violated Nike, Inc.'s duty of disclosure with the U.S. Patent Office under 37 C.F.R. § 1.56. In brief, it will be repeatedly shown that Nike, Inc. has and continues to exhibit a pattern of behavior which is not consistent with the MPEP rules and relevant patent laws of the United States.

28. In 1996, Lyden suggested to an executive at Nike, Inc. that Lyden instead become a ¾ time consultant to Nike, Inc. and "invent in the garage" in the manner of Nike, Inc.'s co-founder Coach Bill Bowerman. This suggestion was acted upon and the result was Lyden's two year "Consulting Agreement" executed on September 10, 1996.

## Factual Background, Continued

**(Lyden and Nike, Inc., September 10, 1996 – September 10, 1998)**

29. Lyden hereby realleges and incorporates by reference paragraphs 1-28, inclusive, as though fully set forth herein.

30. Lyden's two year <sup>3</sup>/<sub>4</sub> time consulting contract as an inventor for Nike, Inc. extended between September 10, 1996, and September 10, 1998.

31. During the time of Lyden's consulting contract with Nike, Inc., Lyden submitted over a dozen invention disclosures, and provided assistance to Nike, Inc. regarding some of their patent lawsuits.

32. Upon information and belief, Nike, Inc. did not have its research and development and design groups act upon the various invention disclosures which Lyden had made, nor did Nike, Inc. file for patents upon the inventions that Lyden provided during the two year term of his consultantship. The subject matter contained in several of Lyden's invention disclosures was instead commercialized and patented by competitors of Nike, Inc.

33. Lyden came to believe and feel that he was in "golden-chains," and so he had a candid discussion with the co-founder of Nike, Inc., Coach Bill Bowerman after a track meet at Hayward Field in Eugene, Oregon. Bowerman then suggested that Lyden do as he had done earlier: "Start a new company and make better products."

34. When Lyden's two year consulting contract with Nike, Inc. came up for possible renewal in September, 1998, he was one of the most prolific inventors in the history of Nike, Inc., but the company elected not to renew Lyden's consulting contract.

35. However, the desire to end the consulting relationship with Nike, Inc. was mutual, as Lyden, for his part, also wished to end his consulting relationship with Nike, Inc. and to start his own small business.

**Factual Background, Continued**

**(September 10, 1998 - Present)**

36. Lyden hereby realleges and incorporates by reference paragraphs 1-35, inclusive, as though fully set forth herein.

37. From September 11, 1998 - present, Lyden has been self-employed as an inventor and consultant in the sporting goods industry. For the sake of providing some background information, a copy of Lyden's resume is attached hereto as **Exhibit CC**. Lyden is presently a named inventor on fifty-one issued patents, and has four patent applications pending.

38. In March, 2002, Lyden entered into an "Intellectual Property and Prototype Agreement" dated March 4, 2002 with Nike, Inc., attached hereto as **Exhibit I**. Between March – October, 2002, Lyden the provided to Nike, Inc. hard copies of Lyden's issued and pending footwear patents including: U.S. 6,449,878; U.S. patent application serial number 09/573,121 which later matured as U.S. 6,601,042; provisional patent application serial number 60/292,644 filed May 21, 2001; provisional patent application serial number 60/345,951 filed December 29, 2001; provisional patent application serial number 60/360,784 filed March 1, 2002; patent application serial number 10/152,402 filed on May 21, 2002 which later matured as U.S. 7,016,867; and, patent application serial number 10/279,626 filed on October 24, 2002 which later matured as U.S. 7,107,235, a relevant excerpt being attached hereto as **Exhibit BB**. All of these Lyden

patents and patent applications were provided to Nike, Inc. between March and October, 2002 on a non-confidential basis, thus the information was in effect publicly disclosed on the date(s) they were provided by Lyden to Nike, Inc. Accordingly, Lyden's patents and patent applications would constitute relevant prior art regarding later filed patent applications of Nike, Inc. directed to like subject matter.

39. In December, 2002, Lyden was informed that Nike, Inc. was not interested in purchasing or licensing his intellectual property, and the last check due under the terms of the "Intellectual Property and Prototype Agreement" between Nike, Inc. and Lyden was paid in January, 2003.

40. Several months later in 2003, Mr. Chester Kyle informed Lyden that Nike, Inc. had filed a patent for an aerodynamic speedsuit for use in track & field. Knowing that the information was in the public domain Lyden asked how could it be possible, and who had been named as inventors? Kyle informed Lyden that someone on the Nike, Inc. campus had called him and expressed the view that it would be better to have the named inventors be regular employees working on the campus of Nike, Inc.

41. However, under the patent laws of the United States, it is not possible to obtain a valid patent without the true inventors being named, or when the subject matter has been disclosed and placed in the public domain over a year before the filing date of a patent application. Nevertheless, Nike, Inc. had filed and was granted U.S. 6,438,755 on August 27, 2002 for an "Aerodynamic Garment For Improved Athletic Performance And Method of Manufacture," attached hereto as **Exhibit P**, which was consistent with the prior invention shown and discussed in Lyden's written disclosure on the subject made in

August, 1989, and also the published articles and works of Kyle and Mr. Len Brownlie which are recited in Lyden's book Distance Running, on page 365.

42. In view of the relevant facts, Lyden suggested to Nike, Inc.'s in-house patent counsel that Nike, Inc. take positive steps to place U.S. 6,438,755, **Exhibit P**, in the public domain. However, Nike, Inc. has instead maintained the patent in force and used it as a scarecrow in the sporting goods industry.

43. Accordingly, what the aforementioned HUARCHE, FREE, and aerodynamic speedsuit apparel incidents make evident is that Nike, Inc. has demonstrated a pattern of action which is contrary to the patent laws of the United States.

44. While not recited in the claims for relief in the present 2<sup>nd</sup> Amended Complaint, Lyden believes that Nike, Inc.'s repeated acts and pattern of filing for patents which are known to be invalid and the commission of fraud upon the U.S. Patent Office constitutes a matter which should be of concern to the Federal Trade Commission because this conduct constitutes a misuse of the patent system, and demonstrates a clear intent to create a barrier to entry, thus to monopolize and prevent fair competition in the public marketplace. As it stands, Nike, Inc. enjoys about one third, and in combination with adidas AG the two companies form an oligopoly having about 2/3rds of the relevant market share in the United States.

45. Nike, Inc.'s repeated acts and pattern of filing for patents known to be invalid and the commission of fraud and inequitable conduct upon the U.S. Patent Office is therefore believed to fall into the subject area of anti-trust law including the Sherman Act, and ORS §§ 646.705, 646.715, 646.725, and 646.730. In the article "Diagnosing Monopoly," Mr. Franklin M. Fisher, 1979, states: "A barrier to entry is anything that

prevents entry when entry is socially beneficial.” In this regard, a body of legal thought exists on the subject of invalid patents and fair competition, e.g., “The Anticompetitive Effects of Unenforced Invalid Patents,” by Christopher R. Leslie.

46. The “innovation agenda” that Nike, Inc. CEO Mark Parker discussed in the 2013 Annual Shareholder Meeting, attached hereto as **Exhibit GGGG**, has been characterized by the filing of new patent applications at a rate previously unknown in the sporting goods industry. Insofar as many of the resulting patents of Nike, Inc. can easily be shown to be invalid due to Nike, Inc.’s violation of its duty of disclosure in the U.S. Patent Office under 37 C.F.R. § 1.56, there is something rotten not in Denmark, but in Beaverton, Oregon.

### **FIRST CLAIM FOR RELIEF**

#### **NIKE’S PATENT INFRINGEMENT OF LYDEN’S U.S. 8,209,883**

47. Lyden hereby realleges and incorporates by reference paragraphs 1-46, inclusive, as though fully set forth herein.

48. On February 21, 2012, Nike, Inc. CEO Mr. Mark Parker disclosed in New York City aerodynamic apparel for use by Nike, Inc.’s sponsored athletes in the London Olympic Games, but also the FLYKNIT Trainer+ shoe upper, as shown and provided in the YOUTUBE video entitled “Nike Innovation Summit NYC 2012”:  
<http://youtu.be/WSLrHo3BHV0> , a portion of which Nike, Inc. presentation is attached hereto as **Exhibit III**.

49. Medial and lateral side view photos of the Nike, Inc. FLYKNIT Trainer+ athletic shoe are provided below:



50. In addition, a superior view photo of the Nike, Inc. FLYKNIT Trainer+ athletic shoe is provided below:



51. The significance of Nike, Inc.'s commercialization of the FLYKNIT athletic shoe has been widely discussed and recorded in the media, e.g., "Nike's HTM Collaboration Shows Off Flyknit Potential," by Erik Siemers, Portland Business Journal, April 18, 2012, attached hereto as **Exhibit PP**. As discussed in this article, the abbreviation HTM stands for "Hiroshi, Tinker, Mark," and the design of the FLYKNIT shoes is represented as being a product of the collaboration between "Nike CEO Mark Parker, Nike design legend Tinker Hatfield, and renowned Japanese designer Hiroshi Fujiwara."

52. However, the key innovative footwear structures associated with the Nike, Inc. FLYKNIT knitted shoe upper had been previously disclosed by Lyden to Nike, Inc. in 2002. For example, certain knitted shoe upper structures associated with the Nike, Inc. FLYKNIT had been disclosed in Lyden's U.S. patent application serial No. 10/279,626 filed on October 24, 2002 which later matured as U.S. 7,107,235, as shown in drawing figures 570-575 and discussed in columns 199-201, and in particular, the brief excerpt of U.S. 7,107,235 attached hereto as **Exhibit BB**.

53. Lyden is the owner of United States Patent No. 8,209,883 ("the '883 patent") entitled "Custom Article of Footwear and Method of Making the Same" including allowed claims 1-42 which issued on July 3, 2012, attached hereto as **Exhibit QQ**, and a relevant excerpt is also attached hereto for convenience as **Exhibit UU**.

54. On August 21, 2012, adidas AG filed for a reexamination of Lyden's '883 patent. The reexamination is now in progress under the old rules and process and can be viewed using the U.S. Patent Office PAIR system by searching for patent control / serial number 95/002,094.

55. Nike, Inc. has filed a patent lawsuit against adidas AG in Germany over the adidas PRIMEKNIT shoe and was granted a preliminary injunction by a German court on September 24, 2012.

56. In addition to the reexamination of Lyden's '883 patent, adidas AG has also filed a reexamination of Nike, Inc.'s U.S. 7,347,011 by Dua et al., **Exhibit VVV**, which is being conducted under the new rules and process.

57. Nike, Inc. has been and now is directly infringing the '883 patent in Oregon, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, importing and /or offering for sale footwear that infringe one or more claims of the '883 patent, to the injury of Lyden.

58. Lyden owned the '883 patent throughout the period of the Nike, Inc.'s infringing acts and still owns the patent.

59. As the formal process of discovery has not begun in this case, all of the possibly infringing Nike, Inc. FLYKNIT athletic shoes which have been commercialized and sold in the United States may not be known to Lyden. However, upon information and belief, the following Nike, Inc. FLYKNIT shoes infringe upon the '883 patent: the Nike, Inc. FLYKNIT Trainer+; the Nike, Inc. FLYKNIT Racer; the Nike, Inc. FLYKNIT LUNAR1+; the Nike, Inc. FLYKNIT Chukka; the Nike, Inc. LUNAR FLYKNIT Chukka; and, the Nike, Inc. FREE FLYKNIT+. Several of the infringing Nike, Inc. FLYKNIT shoes are shown in **Exhibit RR** which is attached hereto.

60. Nike, Inc. has been and is actively inducing infringement and has contributed to infringement of the Lyden '883 patent by retailers, customers, sponsored teams, promotional athletes, and sales personnel by their making, using, selling, and offering for

sale FLYKNIT shoes. Nike, Inc. is thus liable for infringement of the '883 patent pursuant to 35 U.S.C. § 271.

61. Upon information and belief, the Nike, Inc. FLYKNIT Trainer+ shoe shown above on page 31 directly and indirectly infringes (e.g., by contributory and inducement) independent Claim 1, and dependent Claims 2-8, 10-14, 16-21, 23-32, and 34-40 of the Lyden '883 patent. Claims 9, 15, and 33 are believed by Lyden to not be presently infringed, and without having the results of formal discovery Lyden is uncertain as to whether claims 16, 22, and 29 are being infringed.

62. Nike, Inc. also directly and indirectly infringes independent Claim 41 of the Lyden '883 patent.

63. Nike, Inc. also directly and indirectly infringes independent Claim 42 of the Lyden '883 patent.

64. At least after Nike, Inc. has had actual notice of the '883 patent and over Lyden's continued objections, Nike, Inc. has willfully infringed, and knowingly induced infringing acts with the specific intent to induce another's infringement. Nike, Inc. continues to willfully infringe the '883 patent without justification.

65. Nike Inc.'s infringement has damaged or impaired the value of the '883 patent.

66. As a result of the Nike, Inc.'s infringement of the '883 patent, Lyden has suffered monetary damages that are compensable under 35 U.S.C. § 284 in an amount not yet determined but believed to be in excess of 15 million dollars (\$15,000,000.00), and Lyden will continue to suffer such monetary damages in the future unless Nike Inc.'s infringing activities are permanently enjoined by this Court.

67. Unless permanent injunctions are issued enjoining Nike, Inc. and its agents, servants, employees, representatives, affiliates, and all others acting on its behalf from infringing the '883 patent, Lyden will be greatly and irreparably harmed.

68. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and Lyden is thus entitled to an award of his reasonable attorneys' fees.

## **SECOND CLAIM FOR RELIEF**

### **NIKE'S CONVERSION OF LYDEN'S INTELLECTUAL PROPERTY**

69. Lyden hereby realleges and incorporates by reference paragraphs 1-46, inclusive, as though fully set forth herein.

70. In 2005, Lyden discovered by accident while using the U.S. Patent Office's on-line patent search system, the existence of several later filed patents and patent applications of Nike, Inc. which included disclosure and claims directed to the same subject matter as Lyden's own prior patents and patent applications which had been offered to Nike, Inc. in 2002.

71. In order to discuss the conflicting patents and intellectual property issues Lyden called and met Nike, Inc. in-house patent counsel Mr. James Niegowski for lunch on December 14, 2005. In the course of their conversation, Lyden discussed and showed to Niegowski relevant figures from Lyden's earlier patents and patent applications that had been provided and offered to Nike, Inc. in 2002 which showed the same structures and inventions for which Nike, Inc. had later filed and sought to obtain patent protection.

72. Nike, Inc.'s in-house patent counsel communicated to Lyden that he would look into the matter, conduct due diligence, and then take appropriate steps in the U.S. Patent Office. Lyden left the meeting on December 14, 2005 with the impression and

belief that Nike, Inc. would in fact conduct due diligence and take appropriate actions to correct the discussed patent issues in the U.S. Patent Office.

73. However, Lyden later discovered that Nike, Inc. had failed to take appropriate action in the majority of its problematic patent cases, and the number of conflicting patents had actually increased. Lyden then prepared a fourteen page letter to Nike, Inc.'s in-house patent counsel dated April 21, 2010, attached hereto as **Exhibit Q**, which indicated over a dozen later filed conflicting patents of Nike, Inc.

74. On April 21, 2010, Lyden met with Niegowski on the Nike, Inc. campus and hand delivered the letter and also several backup three ring binders including the conflicting patents which had been filed by Nike, Inc. and discussed their contents with Niegowski in some detail. Upon information and belief, there were then at least a dozen patent applications which had been later filed by Nike, Inc. that were in conflict with Lyden's patents and patent applications which had been previously disclosed to Nike, Inc. in 2002.

75. Niegowski responded to Lyden's letter of April 21, 2010 with an e-mail letter dated May 19, 2010 indicating that Nike, Inc. had no interest in purchasing or licensing Lyden's intellectual property, attached hereto as **Exhibit W**.

76. Lyden questioned and needed to know whether Niegowski had actually represented the facts and situation to high level executives at Nike, Inc., and so he responded to Niegowski with the e-mail letter dated May 21, 2010, attached hereto as **Exhibit X**.

77. Lyden then sent an e-mail letter to Nike, Inc. CEO Mr. Mark Parker, and also Nike, Inc. executives Mr. Sandy Bodecker, Mr. Michael Donaghu, and Mr. Tom

McGuirk on May 21, 2010, attached hereto as **Exhibit Y**, which included Lyden's earlier letter provided to Niegowski dated April 21, 2010, **Exhibit Q**, in order to determine if it was indeed the decision of high level executives at Nike, Inc. to continue to pursue adverse and harmful actions regarding Lyden's intellectual property rights and business efforts.

78. Lyden received no response from Nike, Inc.'s CEO Parker, Bodecker, Donaghu, McGuirk, or Niegowski.

79. In support of Lyden's claim regarding Nike, Inc.'s conversion of his intellectual property, a 15 page document entitled "Problematic Nike, Inc. Patents" having a section entitled "Conflicting Nike, Inc. Patents" which indicates over twenty conflicting patents that were filed by Nike, Inc. after Lyden had provided Nike, Inc. with copies of his patents information 2002, is attached hereto as **Exhibit LL**.

80. Nike, Inc. has continued to obtain intellectual property rights by making fraudulent representations with regards to inventorship and/or violating Nike, Inc.'s duty of disclosure and withholding relevant prior art information from patent examiners in the U.S. Patent Office in violation of 37 C.F.R. § 1.56. Nike, Inc.'s repeated acts of commission and omission in the U.S. Patent Office, as disclosed in **Exhibits Q**, and **LL**, have been willful and resulted in the conversion of Lyden's intellectual property.

81. To make an analogy with cattle rustling, Lyden's intellectual property has sometimes been misappropriated and then repackaged into later filed patent applications by Nike, Inc. The company has then kept numerous patent examiners in the U.S. Patent Office in the dark about both the origins of the subject matter and also the most relevant prior art concerning Nike, Inc.'s later filed patent applications in order to cause by such

acts of fraud, inequitable conduct, violation of the duty of disclosure, and conversion, the U.S. Patent Office to improperly grant and essentially re-brand Lyden's inventions and intellectual property with the Swoosh brand and trademark of Nike, Inc.

82. Nike, Inc. has wrongfully represented to the public that it was the originator of inventions which were actually invented by Lyden. The company has done so in part to enhance its own company valuation, public goodwill and brand image at the expense of Lyden's intellectual property and small business effort.

83. The present Court rendered an Opinion & Order on October 22, 2013 which included the following excerpt on the subject of Conversion that relates to the present case which is provided below, and incorporated herein.

“Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.” *Mustola v. Toddy*, 456 P.2d 1004, 1007 (Or. 1969).

Lyden alleges that

Nike, Inc. intended to wrongfully obtain false title to the intellectual property, and take public goodwill, company valuation, and potential profit away from Lyden, and to instead claim it for Nike, Inc.'s own benefit. The desired and practical effect has been to simultaneously harm Lyden's intellectual property and business efforts, and to improve Nike, Inc.'s own. In this regard, Nike, Inc.'s actions resemble those of an intellectual property “cattle rustler” which has succeeded in converting the intellectual property of Lyden and using it to make and sell products under the Nike, Inc. “Swoosh” brand and trademark.

Compl. ¶ 222.

In other words, Lyden alleges that Nike converted his patent rights when Nike obtained patent protection in its name for Lyden's intellectual property. As a result of this conversion, Lyden alleges that he has suffered “loss of profits associated with the launch of a

company...and/or alternatively, the sale or license of Lyden's footwear patents." Id. at ¶ 226.

Nike argues that conversion claims do not apply to intangible assets such as patents. Def.'s Mem. 11 (citing *Vigilante.com, Inc. v. ArgusTest.com, Inc.*, No. CV04-413 MO, 2005 U.S. Dist. LEXIS 45999 (D. Or. Sept. 6, 2005)).

In *Vigilante*, a decision from this district, the court relied on Black's Law Dictionary to define chattel as a "moveable or transferable property; personal property; esp. a physical object capable of manual delivery." Id. at ¶ 44-45.

The court concluded that plaintiff could not state a conversion claim for the source code itself, but that a claim for the disks that stored the source code would be viable. Id. at ¶ 45.

More recently, another court in this district held that "a license or contractual right to receive a transmitted signal; to rebroadcast the signal; and to determine when, where, and by whom the program contained within the signal can be displayed or exhibited, constitutes a chattel that can be converted." *Joe Hand Promotions, Inc. v. Jacobson*, 874 F. Supp. 2d 1010, 1019 (D. Or. 2012). In *Joe Hand*, the court had examined how the Oregon Court of Appeals and district courts in other jurisdictions have addressed whether intangible rights could be chattel. Id. at 1020-21. The court concluded that it is likely that Oregon courts would not limit chattel to tangible property.

The *Vigilante* court limited its analysis to the definition of "chattel." However, under the definition of "chattel," there are specific types of chattel, including "chattel personal" and "chattel real." Black's Law Dictionary 268 (9th ed. 2009). A "chattel personal" is "[a] tangible good or an intangible right (*such as a patent*)." Id. (emphasis added). Given that "chattel personal" is a type of chattel and that patent rights are an example of chattel personal, I am persuaded by the reasoning in *Joe Hand* that chattel is not limited to tangible property. Therefore, I do not agree with Nike's argument that Lyden failed to state a claim for conversion because patents are intangible property rights, and therefore are not chattel.

84. Nike, Inc. has wrongfully taken and used intangible assets associated with Lyden's business efforts for its own benefit both by representing itself to the public and investors to be the originator and rightful owner of the intellectual property of Lyden, and

improperly taking the first mover position in the marketplace. In this regard, Nike, Inc. has improperly taken for its own benefit public goodwill, brand equity, and shareholder investments at the expense and harm of Lyden.

85. The actions of Nike, Inc. in filing and prosecuting numerous conflicting patents after being provided with copies of Lyden's previously filed patents and patent applications, has harmed Lyden's ability to secure investors for a small business start-up, or alternatively, to license or sell his intellectual property to third parties in the sporting goods industry.

86. Lyden's efforts to obtain investors for his business start-up Q Branch, Inc. were known to Nike, Inc. and the general public, as demonstrated by the article entitled "If The Shoe Fits," by Brian Fitzpatrick which appeared in the Portland, Oregon Willamette Week newspaper in November, 2004, attached hereto as **Exhibit MM**. Further, Lyden has had numerous conversations and written communications with Nike, Inc.'s in-house patent counsel about Nike, Inc.'s various conflicting patents, and Lyden's patent portfolio which includes the '883 patent. Lyden has offered to sell or license his intellectual property to Nike, Inc. numerous times between 2002 - present. However, Lyden's good faith efforts to resolve the outstanding patent issues described herein were unsuccessful, and Nike, Inc. had become completely non-responsive prior to Lyden filing the original Complaint on April 18, 2013.

#### MARK PARKER'S RESPONSIBILITY

#### IN THE CONVERSION OF LYDEN'S INTELLECTUAL PROPERTY

87. Parker was a Corporate Vice President at Nike, Inc. with oversight of the Design and Research and Development Group and lead designer Hatfield when Lyden

was hired in May, 1990. Parker and Hatfield are personally close and have been so for over two decades.

88. Parker was later made aware of the issue of Hatfield having taken Lyden's footwear design and invention shown in **Exhibit C** and representing it as his own in connection with the "HUARACHE" style athletic footwear. The Huarache matter was settled between Nike, Inc. and Lyden via the "Intellectual Property License Agreement" dated December 19, 1997, **Exhibit F**.

89. It was also known to individuals working in Nike, Inc.'s Research and Development Group and including Parker that Lyden had invented U.S. 5,384,973, **Exhibit EE**, and advocated for the commercialization of footwear resembling the Nike, Inc. FREE many years before the product was launched. Nike, Inc.'s problematic conduct in later filing and prosecuting numerous patents relating to the Nike, Inc. FREE has already been described herein.

90. In March – October 2002, Lyden disclosed to Nike, Inc. his issued and pending footwear patents in connection with the "IP and Prototype Agreement," **Exhibit I**. Parker was then the President of the Nike, Inc. Brand and aware of this agreement with Lyden. Lyden's footwear patent applications included teachings and disclosure of certain novel knitted footwear upper structures. In December 2002, Nike, Inc. informed Lyden that Nike, Inc. had no interest in his intellectual property. However, Nike, Inc. then began filing patent applications on the same subject matter with claims directed to like knitted footwear upper structures...the very next week.

91. Lyden has been harmed by Nike, Inc.'s repeated wrongful actions and pattern of predatory behavior associated with the company's false representations and later filed

“knock off patents” in the U.S. Patent Office because these actions have confused the rightful ownership and effectively converted Lyden’s intellectual property, and this will continue to harm Lyden’s own business efforts and diminish the value of his intellectual property.

92. In this regard, Nike, Inc.’s CEO Parker along with lead Nike, Inc.’s designer Hatfield have taken personal credit for the Nike, Inc. FLYKNIT products as shown in “Nike’s HTM Collaboration Shows Off Flyknit Potential,” by Erik Siemers, Portland Business Journal, April 18, 2012, **Exhibit PP**.

93. When Lyden worked as a regular employee for Nike, Inc., it may not have been proper from an ethical standpoint for senior employees to “own” his work, but at least the behavior was not illegal and in direct conflict with Lyden’s intellectual property rights. In this regard, Lyden has not worked as a regular employee or consultant of Nike, Inc. since September, 1998, and so it’s now been over fifteen years since Lyden worked for Nike, Inc.

94. Parker is well aware of Lyden’s business efforts and intellectual property, as shown in **Exhibit Y**, and **Exhibit CCCC** attached hereto. Parker has been made aware of Nike, Inc. wrongfully converting Lyden’s intellectual property by Nike, Inc. later filing conflicting patents. Parker is also aware that Nike, Inc. has and continues to commercialize Nike, Inc. FLYKNIT products which infringe Lyden’s ‘883 patent. However, Parker has failed to address Nike, Inc.’s improper behavior and to provide a remedy for this injustice to Lyden. Just the opposite is true.

95. In February, 2012, Parker presented an updated version of the aerodynamic speedsuit for track & field, and introduced the Nike, Inc. FLYKNIT athletic shoe in

connection with Nike, Inc.'s marketing campaign and sales effort for the 2012 Olympic Games, as shown in **Exhibit III**. In July, 2012, the Nike, Inc. Board of Directors rewarded Parker for his leadership and the success of this campaign by offering him a bonus in the form of Nike, Inc. stock options having a value exceeding twenty million dollars. The details of Parker's stock bonus are shown on pages 30, and 34-36 in the Nike, Inc. 2013 Proxy document, **Exhibit FFFF**, attached hereto. Parker is now the highest paid CEO in the State of Oregon.

96. On April 18, 2013, having exhausted months of diplomatic efforts with Nike, Inc. as the company had become completely non-responsive, Lyden had no choice but to bring the original Complaint including a claim for patent infringement by Nike, Inc. regarding the FLYKNIT athletic shoe.

97. Members of Nike's Board of Directors are aware of the original Complaint filed by Lyden on April 18, 2013. However, ignoring the facts and issues recited in the original Complaint, Nike, Inc.'s Board of Directors voted for and ratified Parker's bonus during their 2013 annual shareholder meeting held on September 19, 2013, as shown in the attached **Exhibit GGGG**, "Nike, Inc. Annual Shareholder Meeting Transcript," on page 7. During the same meeting Parker made the following statements concerning the reasons for Nike, Inc.'s success (bold here being added for emphasis):

We have many global competitive advantages, **but the most important one is innovation**. It inspires us, and distinguishes us as a company.

**Innovation drives everything at NIKE** it gives us new technologies and materials, helps us create iconic products, services and experiences that people want and game-changers they can't even imagine. It gets us closer to athletes and consumers. It evolves traditional methods of manufacturing and distribution and bridges

the physical and digital worlds of sport. **Innovation makes NIKE more competitive, sustainable and profitable.**

You saw a lot of that from NIKE this past year. **NIKE Flyknit is a technology we think is among the most important we have ever introduced.** High performance, visually iconic, and produced with new methods of manufacturing that allow us to reduce waste and labor. We introduced the NIKE Flyknit Trainer last summer, and since then have coupled it with two of our most successful platforms; Lunar and more recently, **Free**.

I believe there is more opportunity in the world and more capability inside NIKE than ever before. That's why **we're accelerating our innovation agenda**, delivering more new ideas and solutions faster than ever before – and we're leveraging those across our sport categories, geographies and brands.

98. Accordingly, the Nike FLYKNIT has and continues to be of great commercial value to Nike, Inc. and serves to enhance the company's stock valuation with investors and shareholders.

99. Parker has profited as an individual from the conversion of Lyden's intellectual property and the infringement of his '883 patent relating to the Nike, Inc. FLYKNIT. People sometimes hide behind large corporations and then commit acts that they would not normally undertake as private individuals. In this regard, Parker has acted and hidden behind the power and protection of the Nike, Inc. corporation to convert Lyden's intellectual property for the improper benefit of Nike, Inc. but also to line his own pockets. And Nike, Inc.'s Board of Directors...has rewarded him for it.

100. Under Oregon law, when a corporate officer personally commits a tortious act against a third party, even while acting within the scope of his /her duties, the officer is personally liable, e.g., *Beri, Inc. v. Salishan Properties, Inc.*, 282 Or. 569, 580 P.2d 173 (1978); *Pelton v. Gold Hill Canal Co.*, 72 Or. 353, 142 P.769 (1914); *Hill v. Tualatin*

Academy, 61 Or. 190, 121 P. 901 (1912); Johnson v. Harrigan – Peach Land Development Co., 79 Wash. 2d 745, 489 P.2d 923 (1971); and, Harper v. Interstate Brewery Co., 168 Or. 26, 120 P. 2d 757 (1942) which states:

The fact that one is acting as a corporate representative does not insulate him [or her] from individual liability for his [or her] tortious acts. In other word, if an officer or agent of the corporation through his or her own fault injures another to whom he or she owes a personal duty, that officer or agent is personally liable to the injured third party regardless of whether the act resulting in injury is committed by or for the corporation. It does not matter that liability might also attach to the corporation. Personal liability attached, regardless of whether the breach was through malfeasance, misfeasance or nonfeasance. Fields v. Jantec, Inc., 317 Or 432, 438, 857 P2d 95, 97 (1993) (Quoting Fletcher Cyclopedia of the Law of Private Corporations.)

In particular, another Court held:

Where the officer performs an act or a series of acts which would amount to conversion if he acted for himself alone, he is personally liable even though the acts were performed for the benefit of his principal and without profit to himself personally. Dodson v. Economy Equipment Co., 188 Wash 340, 62 P2d 708, 709 (1936).

101. The fact that Parker had oversight and directed Nike, Inc.'s improper actions as the CEO of Nike, Inc. and that he failed to take constructive action to fairly purchase or license Lyden's patents is bad enough, but that Parker has also taken credit for the inventions of Lyden and personally profited by these actions is deplorable. Such conduct should not be permitted to stand as a bad example and precedent for other CEO's and large corporations vis-à-vis the efforts of other individual inventors and small business start-ups. Accordingly, Lyden has named Parker as an individual in the present complaint.

102. As discussed by Parker in the 2013 Annual Shareholder Meeting Transcript, **Exhibit GGGG**, Nike, Inc. has had a banner year in growth and profits, and Parker stated: “NIKE Flyknit is a technology we think is among the most important we have ever introduced.” Nike, Inc. made a 2 for 1 stock split in December, 2012, and its stock has been at an all time high in recent weeks. In this regard, the innovative Flyknit products have helped to attract new shareholders and investment in Nike, Inc.

103. At the same time, Nike, Inc.’s willful misappropriation and conversion of Lyden’s work and intellectual property continues to thwart and undermine Lyden’s ability to secure investors for his own small business start-up. Whereas, Nike, Inc. has attracted substantial investment capital by converting Lyden’s work and intellectual property, those interested in obtaining funding on Lyden’s behalf have not been successful.

104. In 2011, Ron Buel, the founder of the Willamette Week newspaper, and former Director of Strategic Planning, Sports and Fitness, for Nike, Inc. between 2001-2005, approached Lyden and expressed an interest in entering into a business agreement and obtaining funding for a small business start-up. Buel’s interest in pursuing a business venture continues even to the present day, but he has not been able to secure investment capital.

105. Buel’s efforts were not unsuccessful because Lyden’s patents are not relevant and valuable to the footwear industry. As evidence, adidas AG and Nike, Inc. have both infringed upon Lyden’s patents and commercialized his inventions making them their own brand statement products.

106. Many years ago Charles Vollum and Melvin J. Murdock created a company named Tectronix that spawned our local “Silicone Forest” of tech companies as shown in the attached image and poster created by Portland State University in 2002, **Exhibit HHHH**. In contrast, there have not been many local small business start-ups in the footwear and sporting goods industry over the past 40 years. One of the reasons is that Nike, Inc. has behaved as a “start-up” killer.

107. Lyden at no time consented, expressly or impliedly, to Nike, Inc.’s conversion of Lyden’s inventions and intellectual property.

108. As a result of Nike Inc.’s actions, Lyden has suffered economic harm, including, but not limited to, loss of profits associated with the launch of a company with the support of investors, and/or the sale or license of Lyden’s footwear patents. Nike, Inc.’s wrongful conduct was a substantial factor in causing this harm.

109. Allowing Nike, Inc. to retain the benefits received as a result of its wrongful acts would unjustly benefit Nike, Inc. at Lyden’s expense.

110. Lyden is entitled to an award of the value of the damages associated with Nike, Inc. converting Lyden’s intellectual property and then wrongfully taking the first mover position in the marketplace and public goodwill for its own benefit, and taking shareholder investment and increasing the value of the Nike, Inc. brand by acts of public deception at the expense of Lyden.

111. In addition, Lyden is entitled to restitution of Nike Inc.’s ill-gotten gains and the injury Nike, Inc. has caused Lyden as a result of its numerous acts of conversion which have harmed and diminished the value of Lyden’s intellectual property and business efforts.

112. Lyden believes that the aforementioned acts of Nike, Inc. were willful and in conscious disregard of Lyden's rights, and that Nike Inc.'s acts described above were done with the deliberate intent to injure Lyden's business and improve its own. Lyden is therefore entitled to punitive damages to punish Nike Inc.'s wrongful conduct and deter future wrongful conduct.

### **THIRD CLAIM FOR RELIEF**

#### **NIKE'S FRAUD**

113. Lyden hereby realleges and incorporates by reference paragraphs 1-46, and 69-112 inclusive, as though fully set forth herein.

114. As the present Court has made clear to Lyden and Nike, Inc. in the Opinion & Order of October 22, 2013:

“the elements of a fraud claim are: 1) a representation; 2) its falsity; 3) its materiality; 4) the speakers knowledge of its falsity or ignorance of its truth; 5) his intent that it should be acted on by the person and in the manner reasonably contemplated; 6) the hearer's ignorance of its falsity; 7) his reliance on its truth; 8) his right to rely thereon; and 9) his consequent and proximate injury.” Rice v. McAllister, 519 P. 2d 1263, 1265 (Or. 1974) While a mere omission is not actionable in the absence of a duty to speak, no such duty is required where a plaintiff alleges a defendant actively concealed a material fact. Paul v. Kelly, 599 P.2d 1236, 1238 (1979). “Any words or acts which create a false impression covering up the truth, ...or which remove an opportunity that might otherwise have led to the discovery of a material fact...are classed as misrepresentations, no less than a verbal assurance that the fact is not true. Id. At 66 (quoting Prosser, Law of Torts § 106, at 695 (4<sup>th</sup> ed. 1971)).

115. Lyden and Nike, Inc. entered into an “IP and Prototype Agreement,” in March, 2002, attached hereto as **Exhibit I**.

116. Upon information and belief, Nike, Inc. committed fraud by 1) falsely representing that it was entering into the 2002 “IP and Prototype Agreement,” with Lyden in good faith; which representation was 2) false; and this misrepresentation was, 3) material to Lyden’s decision to enter into the Agreement; and, 4) Nike, Inc. knew it was false; rather, 5) Nike, Inc. knew that a representation of acting in good faith was necessary for Lyden to be willing to provide access to his confidential patent information and disclosures; and, 6) Lyden did not know Nike, Inc.’s representations were false; and Lyden, 7) relied upon Nike, Inc.’s representations; and, 8) Lyden had a right to rely thereon; and as a result, 9) Lyden has been injured because instead of acting in good faith to properly acquire or license the rights to Lyden’s intellectual property on December 11, 2002, Nike, Inc. represented to Lyden that Nike, Inc. was not interested in his intellectual property, but then began improperly filing conflicting “knock off” patents having claims directed to the same subject matter and footwear structures...the very next week.

117. As evidence, the attention of the Court is respectfully directed to the December 18, 2002 filing date of U.S. 6,931,762, by Dua, which is assigned to Nike, Inc., attached hereto as **Exhibit V**. Other examples of later filed and conflicting “knock off” patents by Nike, Inc. are provided and discussed in **Exhibit LL**, attached hereto.

118. Accordingly, Nike, Inc. concealed a material fact, namely, that Nike, Inc. had not acted in good faith in entering into the 2002 “IP and Prototype Agreement” with Lyden, and that during the nine month term of the aforementioned agreement Nike, Inc. was already working...to convert Lyden’s intellectual property.

119. Between December, 2002 – Present, Nike, Inc. also committed other acts of fraud upon Lyden by making false statements and giving false assurances to Lyden

regarding Nike, Inc.'s intention to conduct due diligence and take appropriate actions in the U.S. Patent Office with regards to Nike, Inc.'s improper and conflicting or otherwise problematic patents recited in **Exhibit LL**.

120. As shown in **Exhibits Q, W, X, Y, and LL**, Lyden had e-mail communications, but also phone conversations and at least two face to face meetings with Nike, Inc.'s in-house patent counsel between 2005-2013 on the subject of Nike, Inc.'s improper actions in filing and prosecuting conflicting patents in the U.S. Patent Office that effectively converted or otherwise harmed Lyden's own intellectual property rights and business efforts. During the course of these conversations and meetings, Nike, Inc.'s in-house patent counsel informed Lyden that Nike, Inc. would look into the facts and conduct due diligence, and then take appropriate actions in the U.S. Patent Office.

121. However, Nike, Inc. failed to take appropriate actions in the majority of the problematic patent cases indicated in **Exhibit LL**. In a few patent cases, Nike, Inc. did recite and disclose some of the Lyden prior art patents to patent examiners, but Nike, Inc. then failed to provide the patent examiners with the same level of detailed information which had been provided by Lyden to Nike, Inc., such as, which drawing figures were most relevant to the subject matter. In brief, Nike, Inc. was not forthright with patent examiners in the U.S. Patent Office, and so violated its duty of disclosure, candor and good faith under 37 C.F.R. § 1.56.

122. Given Nike, Inc.'s communications and the false information and impression which was conveyed to Lyden, namely, that Nike, Inc. would conduct due diligence and properly address the issues associated with its problematic patents, which Lyden took at face value and in good faith, Lyden did not then attempt to closely monitor Nike, Inc.'s

patent activity in the U.S. Patent Office. Lyden is not supposed to have to do so, nor is anyone else. Nike, Inc. is supposed to govern itself and has a duty of disclosure and rule of candor to observe in its dealings with the U.S. Patent Office under 37 C.F.R. § 1.56. In this regard, Nike, Inc.'s communications to Lyden created a false impression covering up the truth, and removed an opportunity that might otherwise have led to the discovery of a material fact, namely, that Nike, Inc. did not take appropriate actions to rectify matters relating to their problematic patents in the U.S. Patent Office.

123. What Nike, Inc. accomplished by giving this false information to Lyden was to buy time and get even more slack...to do more unopposed wrongdoing in the U.S. Patent Office. As a result, more conflicting and invalid patents have been granted to Nike, Inc. which obscure, confuse, and convert the legitimate title and intellectual property rights, and diminish the value of Lyden's intellectual property.

124. Nike, Inc.'s improper behavior and resulting "scarecrow patents" then serve to effectively scare off individuals and companies that would otherwise have an interest in Lyden's intellectual property, but who are risk averse or do not have the legal and financial resources to tangle with Nike, Inc.

125. When Lyden discusses licensing or selling his intellectual property with investors or other companies, he has a duty to disclose any ongoing infringements of his patents, and also any conflicting patents of others which could possibly be infringed when commercializing a product. When Lyden discloses the Nike, Inc. FLYKNIT infringement, and over two dozen conflicting and problematic Nike, Inc. "knock off" or "scarecrow patents," as one can imagine...most reasonable and prudent persons would then consider investing in "Goliath" and buying Nike, Inc. stock, as opposed to investing

in “David.” As a result of Nike, Inc.’s actions, the relevant intellectual property rights have been obscured and converted, and the risks associated with a potential investment in Lyden’s business initiative have been increased to the point that Lyden’s small business start-up...has been killed.

126. In support of the present fraud claim Lyden holds that 1) a representation was made by Nike, Inc. in communicating to Lyden that Nike, Inc. would conduct due diligence and address Nike, Inc.’s problematic conduct in the U.S. Patent Office; which representation was 2) false; and, 3) material to Lyden’s own ongoing intellectual property and business efforts; and, 4) Nike, Inc. knew it was false; rather, 5) Nike, Inc. intended by its misrepresentation to buy more time and get more rope...so as to file even more conflicting patents in a manner unopposed by Lyden; and, 6) Lyden did not know Nike, Inc.’s assurances were false; and Lyden, 7) relied upon Nike, Inc.’s assurances in good faith; and, 8) Lyden had a right to rely thereon; and as a result, 9) Lyden has been further injured because instead of taking substantial steps to rectify matters relating to Nike, Inc.’s problematic behavior in the U.S. Patent Office, Nike, Inc. has filed even more conflicting patents which have and will continue to harm Lyden’s business efforts by confusing and obscuring the rightful ownership, converting, and diminishing the value of Lyden’s intellectual property.

127. In light of Nike, Inc.’s fraudulent conduct, it would be inequitable to allow Nike, Inc. to retain any benefit derived therefrom.

128. Nike, Inc.’s fraudulent and unfair business practices have unjustly minimized Lyden’s competitive advantage and have caused and will continue to cause Lyden to suffer damages.

129. As a result of Nike, Inc.'s actions, Lyden has suffered economic harm, including, but not limited to, loss of profits associated with the launch of a small business start-up with the support of investors, and/or alternatively, the sale or license of Lyden's footwear patents. Further, Nike Inc.'s actions have diminished the value of Lyden's patents. Nike, Inc.'s wrongful conduct was a substantial factor in causing this harm.

130. Nike, Inc. should be compelled to disgorge the economic benefits it has obtained in violation of law, and be enjoined from further fraudulent, unlawful, unfair, and deceptive business practices.

131. Lyden believes that the aforementioned acts of Nike, Inc. were willful and in conscious disregard of Lyden's rights, and that Nike, Inc.'s acts described above were done with the deliberate intent to injure Lyden's business efforts and improve its own. Lyden is therefore entitled to punitive damages to punish Nike, Inc.'s wrongful conduct and deter future wrongful conduct.

#### **FOURTH CLAIM FOR RELIEF**

#### **UNFAIR COMPETITION, BUSINESS, AND TRADE PRACTICES / RICO**

132. Lyden hereby realleges and incorporates by reference paragraphs 1-46, and 69-131 inclusive, as though fully set forth herein.

133. Due to the fact that Lyden is an inventor and business person in the sporting goods industry, and also because of his knowledge of sport and experience as a coach, Lyden is aware of **two** persistent streams of improper Nike, Inc. conduct which are harmful to Lyden's present and future business efforts, but also that of others. The following paragraphs will focus upon the unfair competition, business, and trade practices of Nike, Inc. and relevant laws which pertain to the conversion of Lyden's

intellectual property, but also upon how these and other laws apply to Nike Inc.'s improper athlete promotion efforts and support of cheating in sports for gaining an unfair advantage over its business competitors.

Nike, Inc.'s Unfair Competition, Business and Trade Practices / RICO

Relating to Lyden's Intellectual Property And Business Efforts

134. The present Second Amended Complaint and including the supporting exhibits recite not just two, but over a dozen acts of conversion or theft of Lyden's intellectual property by Nike, Inc. over a five year, and/or ten year period between 2002 - Present, as indicated in **Exhibits Q**, and **LL**. For example, during the five year period between 2002 – 2007, Nike, Inc. filed conflicting patents U.S. 6,931,762, U.S. 7,100,308, and U.S. 6,915,596 having claims directed to structures present in the previously filed patents of Lyden which had been disclosed to Nike, Inc.

135. Upon information and belief, Nike, Inc.'s misconduct is a violation of Oregon State Law, and in particular, 2011 ORS § 646.607 Unlawful Business, Trade Practice, and ORS § 646.608, Additional Unlawful Business, Trade Practices; Proof; Rules, and the relevant definitions provided in ORS § 646.005. The corresponding Federal Law is found in the Federal Trade Commission Act, Section 5: Unfair or Deceptive Acts or Practices, 15 USC § 45 – Unfair Methods of Competition Unlawful; Prevention by Commission.

136. With regards to Nike, Inc.'s conversion of Lyden's intellectual property, such acts are believed to fall within the definition of theft recited within ORS § 166.720, Racketeering Activity Unlawful ("RICO"), and in particular, ORS § 164.015, Theft Described, ORS § 164.085, Theft by Deception, ORS § 164.095, Theft by receiving, and

the relevant definitions provided in ORS § 164.095. The corresponding Federal RICO laws are 18 USC § 1962, Prohibited Activities, and 18 USC §§ 2314 and 2315, and the relevant definitions are provided in 18 USC § 1961.

137. Further, many of Nike, Inc.'s repeated acts of conversion of Lyden's intellectual property were conducted by way of mail and electronic communications between the campus of Nike, Inc. located in Beaverton, Oregon, and the offices of Nike, Inc.'s outside patent counsel Banner & Witcoff which is located at 1100 13<sup>th</sup> St. N.W., Suite 1200 Washington, D.C. 20005, and with the U.S. Patent Office which has a mailing address of P.O. Box 1450, Arlington, Virginia 22313. Accordingly, the Federal Laws relating to mail fraud, 18 USC § 1341, and wire fraud, 18 USC § 1343, may also be applied to Nike Inc.'s unlawful actions.

138. The later filing and prosecution by Nike, Inc. of over a dozen conflicting patent applications despite the provided information, efforts, and protests of Lyden, as shown, e.g., in **Exhibits Q**, and **LL**, provides evidence not of an isolated chance accident or oversight, but rather of a scheme of willful action conducted with the participation of multiple employees and legal representatives of Nike, Inc. and which include many related acts which have the same or similar purposes, results, participants, victim, and methods of commission, and these acts are not isolated events, but rather these acts establish and comprise a pattern of activity, and such predicate acts have and also continue to be done with the intent to convert Lyden's intellectual property and rights using U.S. Mail and wire, that is, e-mail, fax communications, and including the U.S. Patent Office electronic EFS-Web filing system, and the like.

139. As previously disclosed, CEO Mark Parker is directly involved as a person in the conduct of the Nike, Inc. business enterprise as defined by 18 USC § 1962 (c), and Parker has and will continue to personally benefit from the misappropriation and conversion of Lyden's intellectual property rights.

140. Moreover, there is continuity of improper action by Nike, Inc. both because there are 5 and /or 10 years time periods that include at least two predicate acts supported by factual allegations recited herein, and also because Nike, Inc.'s past and present conduct in the U.S. Patent Office projects into the future with the threat of repetition.

141. Lyden has standing and there is proximate cause because the relevant intellectual property rights have been obscured and converted, and this has and will continue to cause harm. In this regard, Lyden's ability to secure investors for a small business start-up, and /or his ability to license or sell his intellectual property to other companies in the industry has been reduced, and the value of his intellectual property been diminished by Nike, Inc.'s actions. For example, see attached hereto the recent communication of Under Armour, Inc. to Lyden on November 13, 2013, **Exhibit JJJJ**, regarding the practical effect of the present litigation with Nike, Inc., and adidas AG's reexamination of the '883 patent upon Lyden's efforts to license and / or sell his intellectual property.

142. Nike, Inc.'s actions regarding: the conversion of Lyden's intellectual property rights; Nike, Inc. falsely representing itself to the public and shareholders as the creative source and rightful owner of the converted inventions and intellectual property of Lyden; and, Nike, Inc. taking the first mover in the marketplace, public goodwill and brand

equity for its own benefit and to the detriment of Lyden's business efforts, comprise deceitful, unconscionable, and unfair competition, business and trades practices.

143. Upon information and belief, the improper and unlawful actions of Nike, Inc. recited herein, have been intentional, willful, and predatory in nature, and the clear aim, intent, and effect of Nike, Inc.'s actions have and continue to be those of an intellectual property rustler, and small business "start-up killer." Lyden is therefore entitled to punitive damages to punish Nike, Inc.'s wrongful conduct and deter future wrongful conduct.

Unfair Competition, Business and Trade Practices / RICO

Relating To Nike, Inc.'s Cheating In Sports To Gain Unfair Business Advantage

144. Nike, Inc. has been involved in providing information and financial support for the use of performance enhancing drugs, and like substances, and related medical services to some of its promotional athletes for the purpose of aiding and abetting cheating in sports in order to win public goodwill, brand equity, market share and sales by such fraudulent representations of legitimate athletic success, and thereby gain an unfair competitive advantage over Nike, Inc.'s business competitors in the sporting goods industry. Accordingly, there have been and will continue to be many victims of Nike, Inc.'s repeated and closely related actions.

145. Upon information and belief, Nike, Inc.'s misconduct has been and continues to be in a violation of Oregon State Law, and in particular, 2011 ORS § 646.607 Unlawful Business, Trade Practice, and ORS § 646.608, Additional Unlawful Business, Trade Practices; Proof; Rules, and the relevant definitions provided in ORS § 646.005. The corresponding Federal Law is found in the Federal Trade Commission Act, Section

5: Unfair or Deceptive Acts or Practices, 15 USC § 45 – Unfair Methods of Competition Unlawful; Prevention by Commission.

146. Further, each and every time a Nike, Inc. sponsored promotional athlete has won a national title or other sports award having economic value with the assistance of performance enhancing drugs, or like substances, and related medical services, another competitor who has competed fairly has simultaneously been made the victim of theft and denied his or her rightful title, award, and the associated financial compensation. Moreover, competing business rivals which sponsor the victims of Nike, Inc.'s cheating in sports are also victimized and suffer harm from the uneven playing field that Nike, Inc. has wrongfully created for its own benefit. Every dollar of investment capital which is obtained by Nike, Inc. because of the public goodwill created by the ill-gotten success of its promotional athletes...is one dollar less for other business competitors.

147. In brief, one of the primary aims of individuals who cheat in sports is to win, or perform at a level above and beyond their normal capabilities, in order to get fame, titles, status, and money which they would not be able to obtain in a fair competition conducted on a level playing field. Cheating in sports is theft...of titles, status, and economic benefit from other athletes and their sponsors who compete fairly and believe in clean sport.

148. The practical effect of taking anabolic steroids is known to be on the order of a 2% change, and blood doping can provide approximately a 3% boost in an individual's athletic performance level. This translates into about a 4 second advantage in a 4 minute mile, 12 seconds in the 5,000 meters, 24 seconds in the 10,000 meters, and over 2 minutes in the Marathon event. Given the normal winning margins in these races the use

of performance enhancing drugs, such as anabolic steroids, or the like, and /or blood doping comprises “race fixing.” There exist betting lines in Las Vegas on sports competitions and including track & field.

149. Nike, Inc.’s present annual advertising budget exceeds two billion dollars. In Beaverton, Oregon, Nike, Inc. bets tens of millions of dollars in advertising upon its promotional athletes in connection with marketing efforts and the outcomes of major sporting events. Accordingly, Nike, Inc.’s actions in support of some of its promotional athletes cheating in sports comprises an effort to “align the planets” and enjoy by fixing races, and /or by shifting the odds relating to the outcome of various sports competitions in its favor, a level of marketing and financial success that would otherwise not be achievable by legitimate means and fair competition in the public marketplace.

150. Nike, Inc.’s repeated actions in support of cheating in sport has resulted in theft as defined and recited within ORS § 166.720, Racketeering Activity Unlawful (“RICO”), and in particular, ORS § 164.015, Theft Described, ORS § 164.095, Theft by receiving, and the definitions provided in ORS § 164.095. The corresponding Federal RICO laws are 18 USC § 1962, Prohibited Activities, and 18 USC §§ 2314 and 2315, and the relevant definitions provided in 18 USC § 1961.

151. Upon information and belief, Nike, Inc.’s unfair competition, business and trade practices regarding cheating in sports have been substantially continuous for over the last thirty years. Within the period between 1972 - Present, there are at least three more transparent periods of 5 years and/or 10 years in which two or more similar and related overt acts relating to cheating in sports for the purpose of gaining an unfair business advantage have been committed by Nike, Inc.

Nike, Inc.'s Cheating In Sports, 1981-1986

152. Knight founded team Athletic West with Nike, Inc. Co-Founder the late Mr. Bill Bowerman, and former employee the late Mr. Geoff Hollister in 1977.

153. In 1983, Lyden became aware of the fact that Mr. Dick Brown, an administrator at Nike, Inc.'s club Athletics West facility in Eugene, Oregon was monitoring and supporting the use of performance enhancing steroid drugs with Nike, Inc. promotional athletes. According to former Athletics West athlete Mr. George Malley, this practice had actually started as early as 1978. Malley has hard evidence in the form of a prescription for "Winstol," an anabolic steroid, to support his claim. The prescription was provided a local medical doctor / endocrinologist in Eugene, Oregon. Further, Brown also explored blood doping. Brown's activity was confronted independently by Lyden, Mr. Robert Sevene, who was then a Coach at club Athletics West, and Mr. Jeff Johnson, a Vice President at Nike, Inc. Sevene was present when Johnson admonished Brown. Mr. Jack Daniels, an exercise physiologist and employee of club Athletics West wrote a letter to Nike, Inc. suggesting that the club begin drug testing their own athletes in order to promote compliance with the competition rules, but Nike, Inc. declined to do so.

154. Johnson left Nike, Inc. less than a year after confronting Brown. However, Brown remained....behind the scenes, and continued to work with elite Nike, Inc. promotional athletes and coaches for at least the next two decades, and this, despite Brown's unusual use of certain funds and his misrepresentation concerning having a Ph.D. when he was first hired by Nike, Inc. In this regard, Brown had created and been using an account for special purposes using award money derived from some of the

athletes' performances at national championship competitions, and this was later discovered and brought to the attention of Knight because it created a problem with the IRS. Accordingly, Knight had knowledge of Brown's actions.

155. In response to the internal opposition of Sevene and Daniels at club Athletics West, Brown was "fired" and moved out of the club Athletics West building, and for a time took a lower profile. When Brown left the club Athletics West facility, he took records and certain supplies and equipment over the protests of Sevene to an administrator having oversight at Nike, Inc.

156. In reality, Brown was only physically separated from the main club Athletics West facility, and he continued to work with certain elite athletes of Nike, Inc. including Mary Decker Slaney and Alberto Salazar while Nike, Inc. helped sponsor his Ph.D. work. Decker Slaney and Salazar were also patients of the same medical doctor / endocrinologist in Eugene, Oregon who had provided anabolic steroids to Malley.

157. On June 2, 1986, a Nike, Inc. sponsored athlete named Mr. Jeff Drenth, died of unknown causes at the club Athletics West location, and Nike, Inc., then closed the facility down on July 11, 1986.

158. Sevene was present when representatives of Nike, Inc. suddenly entered the building without warning on July 11, 1986, and then seized the personal and medical records of athletes on the site. Nike, Inc.'s actions may then have been in violation of ORS § 162.295, Tampering With Physical Evidence. This action--taken in odd combination with Nike, Inc.'s continued relationship with Brown is incongruent, and provides prima facie evidence of an effort by Nike, Inc. to hide the fact of and evidence

relating to the continued use of performance enhancing drugs by certain of Nike, Inc.'s promotional athletes, and also the possibility of manslaughter.

159. Brown continued to work with certain promotional athletes and coaches associated with Nike, Inc., and many years later even had an office located in the (then) new Bowerman Building at the track on Hayward Field, at the University of Oregon.

160. In brief, the best efforts of Lyden and others to get Nike, Inc. to take positive steps to deal with the subject of performance enhancing drugs, and doping in sports were not successful in 1983-1986.

161. At the same time, Nike, Inc.'s promotional athletes sometimes fell into the trap of using recreational drugs such as cocaine to offset chemically induced depression which can be triggered by the need and requirement to periodically cycle off of steroid drugs. During the 1980's, Nike, Inc. promotional athletes, but also high level executives at Nike, Inc. developed addictions to cocaine, and then had to undergo rehabilitative therapy and drug treatment.

162. During this period, performance enhancing and so-called recreational drugs were sometimes placed inside of Nike, Inc. athletic shoes and shipped across state lines.

163. Upon information and belief, there exist more than two overt acts of commission by Nike, Inc. associated with sponsoring and supporting the use of performance enhancing drugs, and also recreational drugs---which were then Controlled Substances under Schedule I as defined in 21 USC § 812, of the Controlled Substance Act, which are sufficient to establish a pattern of predicate acts as defined by Oregon State and Federal RICO laws during the period 1981-1986.

Nike, Inc.'s Cheating In Sports, 1995-2000

164. In 1996, Lyden was introduced during his lunch hour to Dr. Morris Mann, Mrs. Mary Decker Slaney, and her husband Mr. Richard Slaney by Mr. Alberto Salazar in the Boston Deli on the Nike campus. Mann informed Lyden that he had been recruited by Salazar and was assisting him with providing nutritional and medical support for Mary Decker Slaney. Mann also informed Lyden that he was going to have a meeting with Mr. Phillip Knight, the co-founder of Nike, Inc., later that same afternoon.

165. The dialogue on exercise physiology and training between Lyden and Mann led to later personal communications from their respective homes.

166. In a subsequent conversation with Lyden, Mann revealed that he had reviewed 1984 Olympic Champion Mrs. Joan Benoit Samuelson's blood work and had used it as a rationale for attempting to convince her to take substances to improve her health and athletic performance, but she refused.

167. The conversations between Lyden and Mann caused Lyden to suspect that Mann and Salazar were engaged in foul play. In this regard, Mann informed Lyden that he had worked previously with bicyclists in Europe, but that he was "under the radar" and so it had been necessary for Salazar to look hard in order to find him.

168. Mary Decker Slaney failed a drug test after the 1996 Olympic Trials in Atlanta, and this was made public in the New York Times on May 15, 1997.

169. Lyden then researched Mann's background and found that his medical license had been revoked in the State of California, and he was a convicted felon. Lyden was informed that Mann had previously worked with bicycle racing teams in Europe and had then provided a subcutaneous bolus or capsule for the controlled time release of anabolic

substances to athletes. Lyden also learned that the substance DHEA, which is known to have anabolic effects, had been suggested by Mann for use by Nike, Inc. athletes.

170. In June, 1997, Lyden took this information to Mr. Paul Kelly, the acting head of Nike, Inc.'s legal department in an effort to stop the use and provision of performance enhancing drugs, or like substances, to Nike, Inc.'s sponsored athletes, and to thwart certain threatened or actual legal actions that Nike, Inc. was contemplating taking or supporting on behalf of Mary Decker Slaney against the USOC, USATF, and the IAAF.

171. Between June and September, 1997, Lyden had another conversation with Kelly. Lyden was told by Kelly that he had followed up and talked to Salazar, who denied any wrongdoing. Kelly also informed Lyden that he had inquired about Knight's reasons for being at the meeting with Mann. Lyden was told by Kelly that Knight had been curious to meet Mann due to a long term skin condition that Knight suffers.

172. The public statements made by Salazar and Knight in the Oregonian, e.g., on September 17, 1997, regarding Decker Slaney were inconsistent with the relevant facts and information which had been provided by Lyden to Nike, Inc.

173. By late September, 1997, it did not appear that Nike, Inc. was confronting and taking action to stop Salazar or Mann, and so Lyden called and questioned both Salazar and Mann about their behavior over the telephone.

174. In October, 1997, Lyden reported his phone discussions with Mann and Salazar to Mr. Kelly in Nike, Inc.'s legal department, and argued that any contemplated legal actions against the USOC, USATF, and the IAAF would be improper given the known facts and circumstances relating to the Decker Slaney case.

175. However, despite the information that Lyden had provided to the head of Nike, Inc.'s legal department about Mann, Salazar, and Decker Slaney in 1997, Nike, Inc. later supported her lawsuit effort against the USOC and IAAF which was filed on April 12, 1999 in the U.S. District Court for the Southern District of Indiana, Indianapolis Division, No. IP-99-0507-C-D/F—S.

176. On April 17, 1999, Lyden received information that Knight, Mann, Salazar, and Mrs. Joan Benoit Samuelson, the 1984 Women's Olympic Marathon Champion had previously met on the Nike, Inc. campus, and that Mann had then discussed the possible use of DHEA.

177. The Decker Slaney case received an unfavorable ruling in the U.S. District Court and was later appealed to the U.S. Court of Appeals for the Seventh Circuit, 244 F.3d 580, where she received another unfavorable ruling on March 27, 2001.

178. Decker-Slaney then appealed the case to the U.S. Supreme Court, which declined to hear the case on October 2, 2001.

179. In the period between 1995-2000, the fact the Salazar searched for and secured the improper services of Mann who had a revoked medical license and was a convicted felon; that the use of DHEA which is now on the NBG's banned substance list was used by at least one promotional athlete and pitched to another in the presence of Knight and Salazar on the campus of Nike, Inc.; that Lyden had gone to the acting head of Nike's legal department with the information on Mann and the improper activity; that Salazar and Knight knew what Decker Slaney had taken and caused her to test positive, but nevertheless publicly represented her to be blameless in the Oregonian Newspaper; and, that Nike's later provided support for Decker Slaney's lawsuits in Federal Court v.

the USOC and IAAF, and including, an appeal to the U.S. Supreme Court...is believed to provide evidence of at least two overt acts of commission by Nike, Inc. sufficient to establish a pattern of behavior of predicate acts as defined by Oregon State and Federal RICO laws during the period 1995 - 2000.

180. In 1997, Brown told Mr. James Ferstle, a newspaper reporter from St. Paul, MN, that after Mary Decker Slaney tested positive in 1996, an individual at Nike, Inc. called and informed him that the substance which she had taken that caused her to test positive was DHEA, and Brown was then asked to provide Nike, Inc. with ideas on how to make persuasive arguments so as to attempt to beat the rap.

181. Further, the use and experimentation with the drug Prozac for athletic performance purposes by Salazar and some of Nike, Inc.'s sponsored distance runners also became public knowledge during this period.

182. Having failed to convince Nike, Inc. of the impropriety of supporting a lawsuit v. the USOC and IAAF, and not wanting to become an accessory after the fact, Lyden spoke with and provided information to the attorney for the IAAF.

183. The case against the USOC and IAAF was dismissed, and Slaney was found guilty of a doping offense by the IAAF.

184. Unfortunately, the efforts of Nike, Inc. relating to supporting cheating in sport in order to feed Nike, Inc.'s marketing formula did not end with the Decker Slaney episode and related pattern of misbehavior between 1995 - 2000. In this regard, the names of the doctors who are solicited by Nike, Inc., and what substances and protocols the athletes use in order to beat the drug tests may change, but the same improper game

and unfair business practice for continuing to leverage the phenomenal in sports for dollars...goes on.

Nike, Inc.'s Cheating in Sports, 2005 - Present

185. Mr. Alberto Salazar has a building named after him on the Nike, Inc. campus in Beaverton, Oregon, and he has been responsible and enjoyed considerable power and influence over the selection of distance runners who have been provided with promotional contracts. At the same time, Salazar has also coached some of Nike, Inc.'s highest profile and elite athletes including, Mr. Mo Farah, and also Mr. Galen Rupp.

186. Mr. Galen Rupp was a minor when Salazar began coaching him, and more recently, Salazar has been working with Miss Mary Cain, age 17.

187. The period 2005 – present has brought some new and even more disturbing developments regarding Nike, Inc.'s pursuit of the next “magic elixir and Dr. Faustus.”

188. Lyden received threats by Dr. Morris Mann during a phone conversation in 1997, and was later advised to keep a record of his information and experiences. Accordingly, Lyden then began to write a living document entitled “Nike, Drugs and Sport,” which provides a historical and narrative account relating to Nike, Inc.'s behavior on the subject. A copy of the current version of this document is attached hereto as **Exhibit LLLL**. However, the names of certain individuals and some information has been redacted in order to protect both the identity of innocent witnesses from the possibility of retaliation, but also the identity of athletes and individuals who in their youth, perhaps made decisions which they may possibly regret...because of their relative inexperience, but also because they were then under the influence and guidance of older individuals in positions of responsibility who were coaches and / or administrators

working for Nike, Inc. Some of these individuals whose names are recited, but also some whose names have been redacted will provide declarations and /or testimony at trial.

189. As disclosed in the attached document “Nike, Drugs and Sport,” **Exhibit LLLL**, Lyden has been approached by several individuals who were associated with Nike, Inc.’s “Oregon Project.” In brief, the use of the drugs Prozac and Prednisone for athletic performance purposes which are controlled substances, but also other substances called “Testoboost,” “GH-Enhancer,” “Alpha- Male,” Androgel, and a mystery substance marked “allergy medicine” which was in a distinctive container resembling those used for EPO which had to be kept refrigerated under 34 degrees, another substance which was seen by an individual in the media in Mr. Mo Farah’s bag after the 2012 Olympic Final and cover-up of this discovery by Nike, Inc., but also, the controversial treatment for the alleged thyroid disorders of several elite Nike, Inc. promotional distance runners which has been called into question by other reputable doctors, would provide at least two overt acts believed to be sufficient to establish a pattern of predicate acts as defined by Oregon and Federal RICO laws, and may also invite, if not demand, a grand jury investigation which might once and for all...help to bring an end to over 30 years of wrongdoing.

190. Dick Brown, Ph. D. is now gravely ill.

191. Salazar has in more recent years engaged Dr. Jeffrey Brown of Houston, Texas, and Nike, Inc. has been paying for his services, as revealed in the recent Wall Street Journal article published on April 10, 2013, entitled “U.S. Track’s Unconventional Physician Dr. Brown Treats Runners For A Disorder Not Known to Afflict Them. His Patients’ Medal Count: 15 Olympic Golds,” by Sara Germano and Kevin Clark, Wall Street Journal, April 10, 2013, attached hereto as **Exhibit SS**.

192. Besides the allergy problem which Mr. Galen Rupp sometime suffers, he is also revealed in **Exhibit SS** to have an alleged thyroid problem. Several experts cited in the Wall Street Journal article including one at the Mayo Clinic raise serious questions about Dr. Jeffrey Brown's diagnosis and method of treatment. Further, many individuals who are knowledgeable of track & field are amazed that an individual with so many health problems...can be the fastest American runner from 1500 meters to 10,000 meters, and what a coincidence that Nike, Inc.'s previously sponsored phenomenon at 5,000 meters and 10,000 meters, Mr. Robert Kennedy, also suffered from the same condition and was serviced by the very same doctor.

#### NIKE, INC. CO-FOUNDER

#### PHILLIP KNIGHT'S INDIVIDUAL RESPONSIBILITY

193. The Co-Founder and Principle Shareholder of Nike, Inc., Mr. Phillip Knight was the acting CEO of Nike, Inc. for most of the 1980's, 1990's, and even until 2004 when he became Chairman of the Board. Knight has had oversight and sometimes been directly involved and participated in decisions relating to former club Athletics West, the Oregon Project, and activity of Coach Salazar. In fact, Knight founded team Athletic West with Nike, Inc. Co-Founder Mr. Bill Bowerman, and a former employee the late Geoff Hollister in 1977. Accordingly, Knight was aware and also had a decision making role concerning significant actions and events which transpired in connection with club Athletic West between 1977 – 1986, as recited above in paragraphs 144-192.

194. Between 1995 - 1997, after Decker Slaney made a sudden come-back and was again in phenomenal, if not miraculous "fountain of youth" athletic shape, Knight was present in a room on the campus of Nike, Inc. with Salazar when Dr. Morris Mann

suggested the use of DHEA to 1980 Olympic Marathon Gold Medalist, Mrs. Joan Benoit Samuelson, who later declined to take the substance.

195. In 1997, Knight also made public statements to the *Oregonian* declaring Decker Slaney to be completely blameless even though he had been previously made aware of the information that Lyden had shared with the acting head of Nike, Inc.'s legal department, Mr. Paul Kelly, which related to the activity of Mann and the use of the substance DHEA with Decker Slaney. Knight's remarks to the press are shown in the following excerpt of the story entitled, "*Mary Slaney Cleared of Drug Use Charge*," by Abby Haight, *Oregonian*, September 17, 1997:

Slaney will return to racing, said Alberto Salazar, Slaney's confidant and coach. "She will, because that was her reason for not giving it up," he said. "Because what she stood for in the past--good, hard, clean running--was being questioned if she didn't win it. And because she wanted to run again." . . . Nike executive Phil Knight, whose company sponsors Slaney, said the runner's case should prompt changes in drug testing. "Both Mary and track and field have been stained by the accusations raised in this case, which are false," he said in a statement. "We applaud Mary for her efforts to end the use of this test and to replace it with drug-testing programs that do work."

196. In addition, given the known facts and false grounds that existed for even contemplating taking a legal action, and despite Lyden's best efforts to dissuade...Nike, Inc. later provided support to Decker Slaney regarding the lawsuit in Federal District Court brought against both the USOC and IAAF filed on April 12, 1999 in the U.S. Federal District Court for the Southern District of Indiana, Indianapolis Division, No. IP-99-0507-C-D/F—S with Knight's knowledge.

197. It has become public knowledge that Nike, Inc. engaged Dr. Jeffrey Brown of Houston, Texas, and was paying for his services, as revealed in an article in the Wall Street Journal, **Exhibit SS**.

198. Moreover, as discussed by Salazar in the recent UK Telegraph article by Simon Hart, entitled “Alberto Salazar takes a swipe at rumour-mongers who put Mo Farah’s sudden run of success down to doping,” published August 19, 2013, **Exhibit NNNN**, page 3, Salazar is still very close to Nike, Inc. Chairman of the Board, Knight.

199. As discussed above in Paragraph 100, executive offices are responsible for tortious acts committed against third parties. In this regard, the person, Co-Founder, former CEO, Principle Shareholder and present Chairman of the Board has been and continues to be the person, leader and dominant force guiding the present and future conduct of Nike, Inc. and is unquestionably engaged in the conduct of the business enterprise Nike, Inc., as recited and defined in 18 USC § 1962 (c). Accordingly, Knight has been named as an individual in the present complaint.

200. Nike, Inc.’s activity in seeking out performance enhancing drugs, and like substances, and obtaining the services of various individuals for the purpose of improperly enhancing the performance of Nike, Inc.’s sponsored athletes now spans at least three decades, and there is no sign...that it will end.

201. Other companies in the sporting goods industry, e.g., adidas AG, Puma SE, New Balance Athletic Shoe, Inc., Under Armour, Inc., and ASICS, as well as Lyden, and his “Q Branch, Inc.” have been engaged in competition with Nike, Inc. Some of the different areas of business competition can include public goodwill for their brand(s), the perceived added value of their work, products and/or services which are due to

innovation and a certain exclusivity which can be provided by intellectual property rights, and the effectiveness of promotions, marketing, and advertising efforts which seek to attract customers and increase market share and sales, but also capital investment by shareholders.

202. In the context of the competitive business environment and public marketplace in the United States, Lyden believes that the actions of Knight and Nike, Inc. relating to helping Nike, Inc.'s promotional athletes to cheat, and the making of false representations as to the legitimacy of such tainted athletic performances in order to enhance Nike, Inc.'s brand image and take away sales, profits, and shareholder investment from other competitors and instead claim such for the benefit of Nike, Inc., constitute deceitful, unconscionable, and unfair competition, business, and trade practices.

203. Upon information and belief, there exists a pattern of substantially continuous unfair competition, business, and trade practices that includes numerous improper, unconscionable, unlawful, similar, and related behaviors and overt acts by Knight and Nike, Inc. over at least a thirty year period between 1972-2013, and within this temporal span, at least 3 more distinct or transparent 5 year and/or 10 year periods in which at least two overt acts have been committed by Nike, Inc. which are sufficient to establish a pattern of unlawful predicate acts as defined by applicable Oregon State and Federal Laws, and including RICO.

204. The many similar related actions of Knight and Nike, Inc. provide evidence not of an isolated chance accident or oversight, but rather of a scheme and plan of willful action conducted with the participation of Nike, Inc. corporate officers, employees,

coaches, agents, and athletes. Further, these many related acts have the same or similar purposes, results, participants, victim(s), and methods of commission, and these acts are not isolated events, but rather they serve to establish and comprise a pattern of predicate activity as defined by applicable Oregon State and Federal RICO laws.

205. In addition, there is continuity of improper action by Knight and Nike, Inc. both because there are 5 and /or 10 years time periods including at least two predicate acts supported by factual allegations recited herein, but also because Nike, Inc.'s past and present conduct in helping elite promotional athletes to cheat is unwavering and projects into the future with the threat of repetition.

206. Lyden has standing and there is proximate cause because each dollar which goes to Knight and /or Nike, Inc. as the result of the deceptive and unfair competition and business practices which have been cultivated and flourished under Knight's direction is one dollar less for Lyden, and other rival companies that are trying to compete with Nike, Inc. and which have and will continue to be harmed because they are not able to fairly compete on the unlevel playing field Nike, Inc. has created for its own unfair competitive advantage, and benefit. Moreover, Lyden wrote and published the book "Distance Running," and still advises coaches and athletes...who are faced with the unfair business and competition practices of Nike, Inc.

207. Nike, Inc.'s numerous and repeated improper actions with regards to the misappropriation and conversion of Lyden's intellectual property, but also Nike, Inc.'s unconscionable athlete promotions and marketing efforts which have been aided by providing performance enhancing drugs, like substances, and related medical service to promotional athletes, both provide evidence of a pattern of unfair competition, business,

and trade practices which have and will continue to undermine fair competition in the marketplace, and will continue to harm Lyden, and others.

208. Moreover, Lyden believes that the aforementioned acts of Nike, Inc. were willful and in conscious disregard of Lyden's rights and business efforts, and that Nike, Inc.'s acts were done with the deliberate intent to improve its own business at the expense and while causing harm to Lyden. Lyden is therefore entitled to punitive damages to punish Nike, Inc.'s wrongful conduct and deter future wrongful conduct.

209. Accordingly, Lyden asks the Court to provide the relief which is respectfully requested within the following Claims and Prayer for Relief.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Robert M. Lyden, respectfully prays for judgment against Defendants, Nike, Inc., Mark Parker, and Phillip Knight as follows:

1. A judgment declaring that Nike, Inc. has infringed one or more claims of the '883 patent literally and/or under the doctrine of equivalents;
2. A judgment declaring that Nike, Inc. has willfully infringed one or more claims of the '883 patent literally and/or under the doctrine of equivalents;
3. A preliminary and/or permanent injunction prohibiting Nike, Inc. and its officers, directors, employees, agents, affiliates, divisions, branches, subsidiaries, and all others acting in concert with Nike, Inc. or on its behalf from further infringing the '883 patent;
4. An award to Lyden of damages to compensate for Nike, Inc.'s past and present acts of infringement of the '883 patent, including costs, and prejudgment and post-judgment interest;

5. An award to Lyden of enhanced damages due to Nike, Inc.'s willful infringement of the '883 patent as provided under 35 U.S.C. § 284;

6. A judgment and award to Lyden in an amount to be determined by the Court and increased as provided by applicable law due to Nike, Inc.'s and Mark Parker's misappropriation and conversion of Lyden's intellectual property;

7. A judgment and award to Lyden in an amount to be determined by the Court and increased as provided by applicable law due to Nike, Inc.'s fraud upon Lyden;

8. A judgment and award to Lyden in an amount to be determined by the Court and increased as provided by applicable law, including the Oregon State and /or Federal RICO laws, due to Nike, Inc.'s, Mark Parker's, and Phillip Knight's unfair competition, business, and trade practices;

9. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Lyden his reasonable attorneys' fees; and,

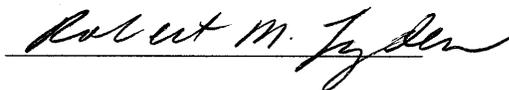
10. For any other and further relief as the Court may deem just and proper under the circumstances.

**JURY TRIAL DEMAND**

Plaintiff Robert M. Lyden respectfully requests a trial by jury of any and all issues so triable that are raised herein or which hereinafter may be raised in this action.

DATED: December 6, 2013

Respectfully Submitted By:



Robert M. Lyden  
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E-mail: robertlyden@comcast.net  
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**CERTIFICATE OF SERVICE**

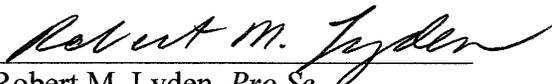
I HEREBY CERTIFY that I have made service of the foregoing **AMENDED COMPLAINT**, and including its attached **EXHIBITS** by sending a true and correct copy of same in the following manner:

- U.S. regular mail, first class postage prepaid;
- Hand Delivery;
- Fascimile;
- Express and/or overnight service;
- Email;
- Notice of electronic filing using the CM/ECF system.

to the person listed below and addressed as follows:

Per Ramfjord  
Stoel Rives, LLP  
900 S.W. 5<sup>th</sup> Ave., Suite 2600  
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Attorney for Defendant

Dated: December 6, 2013

  
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