

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

HARVEST TRADING GROUP, INC.,
Petition

v.

VIREO SYSTEMS, INC. AND
UNEMED CORPORATION,

Patent Owners

U.S. PATENT NO. 8,354,450
IPR 2016-00945

U.S. PATENT NO. 8,962,685
IPR 2016-00947

DECLARATION OF MARK FAULKNER

Ex. 2001

DECLARATION

I, Mark Faulkner, hereby declare and say:

1. I am over the age of eighteen (18) and have personal knowledge of the matters set forth herein.
2. I am the President of Vireo Systems, Inc. (“Vireo” or “Owner”).
3. Vireo is one of the co-owners of U.S. Patent Nos. 8,354,450 (the “ ‘450 Patent”), 8,962,685 (the “ ‘685 Patent”), 8,026,385 (the “ ‘385 Patent”), and 7,608,641 (the “ ‘641 Patent”).
4. I understand that the ‘450 Patent is subject to a petition for *inter partes* review in Proceeding No. IPR2016-00945 filed by the Petitioner, Harvest Trading Group, Inc., and that the ‘685 Patent is subject to a petition for *inter partes* review in Proceeding No. IPR2016-00947, also filed by Harvest Trading Group, Inc. I further understand that the ‘450 Patent is identified as a continuation in part of the ‘385 Patent, the ‘385 Patent is a continuation of the ‘450 Patent, and that the ‘685 Patent is a divisional of the ‘450 Patent.
5. Vireo and ProMera Health, LLC (“ProMera”) were parties to a Product Development and Manufacturing Agreement (“PDMA”) under which Vireo was responsible for manufacturing a creatine hydrochloride nutritional supplement, and ProMera was to market and distribute creatine hydrochloride

nutritional supplements covered by the '450 and '685 Patents under the CON-CRET brand.

6. ProMera is a limited liability company with three members, which include HTG Ventures, LLC (51% ownership) and the Patent Owner (Vireo, 42% ownership). During the PDMA, ProMera's managers were John Lewis, Tim Kensinger ("Kensinger"), and myself. Petitioner was identified as a resource ProMera would use to market and distribute creatine hydrochloride. HTG Ventures appointed managers Kensinger and Lewis, who have caused ProMera to use Petitioner as an exclusive distributor, which is the subject of a separate lawsuits that are currently pending. Upon learning of HTG Ventures' and its appointed managers' misconduct, Vireo terminated the PDMA (and ProMera's license) and I resigned as manager. ProMera and Petitioner continued to sell creatine hydrochloride in violation of the patents.
7. Petitioner (Harvest Trading Group, Inc.) is a corporation, and has three officers: James Lewis (President), John Lewis (Treasurer), and Kensinger (Secretary). These same three individuals are also the owners of Petitioner.
8. HTG Ventures, LLC, a limited liability company, has three members who coincide with the officers and owners of Petitioner: John Lewis, James Lewis, and Kensinger. The managers of HTG Ventures are also the same three individuals. HTG Ventures is a holding company for its owners' interest in

ProMera (51% ownership). Petitioner and its owners (John Lewis, James Lewis, and Kensinger) caused HTG Ventures to manage ProMera according to their wishes.

9. Harvest Trading Group Technologies, Inc. (“HTG Tech”) is an affiliate of, and shares much of the same ownership of, Petitioner. HTG Tech provided certain operational support to ProMera in its sale and distribution of CON-CRET.
10. As President of a member of ProMera, I became familiar with the operation of ProMera, with the owners and managers of Petitioner (Harvest Trading Group, Inc.) and its affiliates (HTG Ventures and HTG Tech), and the individuals that primarily controlled the operation of these entities.
11. I was personally involved in a number of meetings that included John Lewis, James Lewis, and Kensinger discussing operation of ProMera and the distribution and sale of the CON-CRET product. In those meetings, Kensinger provided the same amount of input, influence, and control as that provided by John Lewis and James Lewis. John Lewis, James Lewis and Kensinger acted as co-equals in controlling the operations. Kensinger is a manager of ProMera.

12. I have direct knowledge of Kensinger controlling and directing various aspects of ProMera's operations and litigation strategy. First, when Vireo and ProMera negotiated amendments or changes to the PDMA, Kensinger communicated and directed ProMera's position as Vireo's licensee on intellectual property issues and its obligations for defense.
13. Second, Kensinger also directed or influenced various aspects of ProMera's implementation of its obligations under the PDMA, including directly influencing ProMera's retail strategy for sale of the CON-CRET products, and resolving disputes with Vireo over various fees and charges.
14. While the PDMA was in place, ProMera sold the CON-CRET nutritional supplements using the creatine hydrochloride supplied by Vireo to its managers' affiliate, Petitioner. ProMera or Petitioner, under the ProMera brand, advertised the CON-CRET products as "patented" and its packaging included a reference to the '450 and '685 Patents.
15. The patent application that ultimately issued as the '450 Patent was filed as a continuation in part of the '385 Patent on October 21, 2010. While the PDMA was in place, James P. Lewis, John T. Lewis, and Kensinger (the principals of ProMera and Petitioner) were provided copies of the pending patent applications, communications to and from the United States Patent and Trademark Office ("USPTO"), and provided input on the prosecution of the

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.