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**U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:12-cv-01809-ROS
Internal Use Only**

Airware Holdings Incorporated et al v. Clerisy Corporation et al
Assigned to: Chief Judge Roslyn O Silver
Cause: 28:2201 Declaratory Judgment

Date Filed: 08/24/2012
Jury Demand: Plaintiff
Nature of Suit: 830 Property Rights: Patent
Jurisdiction: Federal Question

Plaintiff

Airware Holdings Incorporated
doing business as
Airware Labs

represented by **David C Larkin**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Crown Dynamics Corporation

represented by **David C Larkin**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Clerisy Corporation

Defendant

Transition Technologies LLC

*Patent
6,295,982*

Date Filed	#	Docket Text
08/24/2012	1	COMPLAINT. Filing fee received: \$350.00, receipt number PHX 0970-

		7157226, filed by Crown Dynamics Corporation, Airware Holdings Incorporated (submitted by David Larkin). (Attachments: # <u>1</u> Civil Cover Sheet)(REK) (Entered: 08/24/2012)
08/24/2012	● <u>2</u>	SUMMONS Submitted by Airware Holdings Incorporated, Crown Dynamics Corporation (submitted by David Larkin). (Attachments: # <u>1</u> Summons)(REK) (Entered: 08/24/2012)
08/24/2012	● <u>3</u>	Corporate Disclosure Statement by Airware Holdings Incorporated, Crown Dynamics Corporation (submitted by David Larkin). (REK) (Entered: 08/24/2012)
08/24/2012	● <u>4</u>	Filing fee paid, receipt number PHX 0970-7157226. This case has been assigned to the Honorable Roslyn O. Silver. All future pleadings or documents should bear the correct case number: CV 12-01809-PHX-ROS. Notice of Availability of Magistrate Judge to Exercise Jurisdiction form attached. (REK) (Entered: 08/24/2012)
08/24/2012	● <u>5</u>	Summons Issued as to Clerisy Corporation, Transition Technologies LLC. (Attachments: # <u>1</u> Summons)(REK). *** IMPORTANT: When printing the summons, select "Document and stamps" or "Document and comments" for the seal to appear on the document. (Entered: 08/24/2012)

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Airware Holdings, Inc. (d/b/a Airware
Labs), Crown Dynamics Corp.,

Plaintiffs,

vs.

Clerisy Corp., Transition Technologies,
LLC,

Defendants.

No.

**COMPLAINT FOR
DECLARATORY JUDGMENT OF
PATENT NON-INFRINGEMENT**

**JURY DEMAND: Plaintiff demands a
trial by jury.**

Plaintiffs AirWare Holdings, Inc. and Crown Dynamics Corp. (collectively "Plaintiffs") request a jury trial on all issues and state and allege as follows:

PARTIES

1. Plaintiff AirWare Holdings, Inc. ("AirWare") is a wholly-owned subsidiary of Crown Dynamics Corp. and is a corporation organized and existing under the laws of the State of Nevada with a place of business at 8399 East Indian School Road, Suite 202, Scottsdale, Arizona 85251. AirWare is engaged in the study, research, and development of products related to improving people's breathing. AirWare, among other things, makes, uses, and sells nasal devices.

2. Plaintiff Crown Dynamics Corp. is a corporation organized and existing under the laws of the State of Delaware and has a business address at 8399 East Indian School Road, Suite 202, Scottsdale, Arizona 85251.

1 volatile substances from contacting the skin.”¹ Because all of the remaining claims depend
2 from the independent claims, they too require these same limitations.

3 16. D shows a nasal device product made by Plaintiffs that does not include a filter.
4 As indicated on the Exhibit, the oval, tubular portions of the device are inserted into each of
5 the nostrils. The nasal bridge remains outside of nasal cavities for easy removal of the
6 device.

7 17. Exhibit E shows a nasal device product made by Plaintiffs that includes a filter.
8 The filter is circled and identified on the Exhibit. The filtered product is used, inserted, and
9 removed in substantially the same manner as the non-filtered product.

10 18. As may be seen, Plaintiffs’ products do not include a barrier as required by the
11 claims of the ‘982 patent. More particularly, Plaintiffs’ products do not include a barrier
12 “substantially impermeable to the [] volatile substances carried by the carrier” and “adapted
13 to be interposed between the carrier and the [] skin.”

14 19. All of the products named in the Defendants’ Complaint made by Plaintiffs are
15 substantially similar to those shown in Exhibits D and E.

16 20. Because the products made, used, and/or sold by Plaintiffs do not include each
17 and every element of any claim of the ‘982 patent, Plaintiffs do not infringe the ‘982 patent.

18 **Prayer for Relief**

19
20 ¹ Figures 2 and 3 of the ‘982 patent (included as Exhibit C with relevant elements
21 circled and labeled) illustrate a vehicle claimed in the ‘982 patent, including the limitations
22 related to the barrier. Column 3, lines 20-36 explain that as shown in Figures 2 and 3,
23 “vehicle 20 is generally comprised of a series of layers including a carrier generally
24 designated at 31, a barrier 32, an adhesive backing 33 and a cover 34 for protecting adhesive
25 backing 33 prior to use. . . . Barrier 32 is fixed to barrier [sic] 31 with, for instance, a suitable
26 adhesive and is constructed of a metallic foil, wax paper, thin plastic or other material
27 substantially impermeable to the one or more volatile substances carried by barrier [sic] 31.”
28 The specification later makes clear why the impermeable barrier is so important: “Barrier 32
is important for preventing the one or more volatile substances carried by barrier [sic] 31
from seeping into the adhesive layer which may not only compromise adhesive backing 33,
but also cause the one or more volatile substances to contact the skin which, in some
instances, may result in unwanted skin irritation.” Column 3, lines 54-59.

1 WHEREFORE, Plaintiffs pray judgment against Defendants as follows:

2 1. A declaratory judgment that U.S. Patent No. 6,295,982 is not infringed,
3 contributorily infringed, or infringed through inducement by Plaintiffs.

4 2. An order enjoining Defendants, and those in active concert or participation
5 with Defendants who receive actual notice thereof, from in any way charging or threatening
6 patent infringement against Plaintiffs or any of Plaintiffs' current or prospective customers,
7 dealers, licensees, agents, servants, or employees based on the patent-in-suit.

8 3. An order awarding Plaintiffs their reasonable costs and attorneys' fees, in
9 accordance with 35 U.S.C. §285.

10 Pursuant to Fed. R. Civ. P. 38, Plaintiffs request a trial by jury on all counts so triable.

11 Respectfully submitted this 24th day of August, 2012.

12 DAVID C. LARKIN, P.C.

13 By: s/ David C. Larkin
14 David C. Larkin
15 Attorney for Plaintiffs
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