



**ADDUCI MASTRIANI  
& SCHAUMBERG LLP**

ATTORNEYS AT LAW  
1200 SEVENTEENTH STREET, N.W. WASHINGTON, DC 20036  
Tel: (202) 467-6300 Fax: (202) 466-2006 Web: www.adduci.com

CBI: 09-114

February 10, 2009

**VIA HAND DELIVERY**

The Honorable Marilyn Abbott  
Secretary  
U.S. International Trade Commission  
500 E Street, S.W., Room 112  
Washington, DC 20436

DOCKET NUMBER
DN 2650
Office of the Secretary Int'l Trade Commission

Re: Certain Adjustable Keyboard Support Systems and  
Components Thereof, Inv. No. 337-TA-

Dear Secretary Abbott:

Enclosed for filing on behalf of Complainant Humanscale Corporation are documents in support of Humanscale's request that the Commission commence an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended. A request for confidential treatment of Confidential Exhibits 9 and 11-14 is included with this letter.

Accordingly, Complainant submits the following documents for filing:

1. An original and twelve (12) copies of the verified Non-Confidential Complaint and an original and six (6) copies of the accompanying exhibits, with the Confidential Exhibits segregated from the other material submitted (original and one (1) copy unbound, without tabs). (Commission Rules 201.6(c), 210.4(f)(3)(i) and 210.8(a));

2. Two (2) additional copies of both the Non-Confidential Complaint and accompanying Non-Confidential exhibits for service upon each proposed respondent. (Commission Rules 210.4(f)(3)(i), 210.8(a)(iii) and 210.11(a));

3. Two (2) additional copies of the Confidential Exhibits for each proposed respondent;

4. Certified copy of U.S. Patent No. 5,292,097 in the original Complaint and legible copies of the patent included in all copies of the Complaint as Exhibit 1;

V. JAMES ADDUCI III

LOUIS S. MASTRIANI

TOM M. SCHAUMBERG

HARVEY B. FOX

WILL E. LEONARD

MUNFORD PAGE HALL II

MICHAEL L. DOANE

SARAH E. HAMBLIN

JAMIE D. UNDERWOOD

WILLIAM C. SJOBERG

ANDREW F. PRATT

IAN A. TARONJI

PATRICIA LARIOS

GIAN SHENG

DAVID H. HOLLANDER JR.

GREGORY F. GEARY

KATHERINE F. LAHNSTEIN-BERTOCCI

PAMELA L. VAN DORT

OF COUNSEL

JOHN C. STEINBERGER

PAUL G. HEGLAND

admitted to a bar other  
than D.C. practice limited  
to federal courts & agencies

AFFILIATE

AMSS TRADE SERVICES LLC

CARLOS MOORE, PRESIDENT

5. Certified copy of assignment of U.S. Patent No. 5,292,097 to Humanscale Corporation as Exhibit in the original Complaint and legible copies included in all copies of the Complaint as Exhibit 2;

6. Certified copy of Reexamination Certificate No. 5,292,097 C1 ("the '097 patent") in the original Complaint and legible copies of the reexamination certificate included in all copies of the Complaint as Exhibit 4;

7. Claim chart applying independent claim 7 of the '097 patent to exemplary infringing products as Exhibit 6;

8. One (1) certified copy and three (3) additional copies (on CD-ROM) of the prosecution history for U.S. Patent No. 5,292,097 (Appendix A) (Commission Rule 210.12(c)(1));

9. One (1) certified copy and three (3) additional copies (on CD-ROM) of the reexamination prosecution history of U.S. Patent No. 5,292,097 C1 (Appendix B) (Commission Rule 210.12(c)(1));

10. Four (4) copies on (CD-ROM) of each reference document identified in the prosecution history of the U.S. Patent No. 5,292,097 and each reference document identified in the reexamination prosecution history of U.S. Patent No. 5,292,097 C1 (Appendix C). (Commission Rule 210.12(c)(2));

11. One (1) additional copy of the Complaint and the accompanying non-confidential exhibits for service upon the Embassy of Canada in Washington, DC (19 C.F.R. §§ 210.8(a)(iv) and 210.11(a)(1)(ii)); and

12. A certification below pursuant to Commission Rules 201.6(b) and 210.5(d) requesting confidential treatment of Exhibits 9, 11-14.

In accordance with Commission Rules 201.6 and 210.5, 19 C.F.R. §§ 201.6 and 210.5, Humanscale Corporation requests confidential treatment of the business information contained in Confidential Exhibits 9, 11-14.

The information for which confidential treatment is sought is proprietary commercial information not otherwise publicly available. Specifically, Confidential Exhibit 9 contains business information not otherwise publicly available; Confidential Exhibit 11 contains proprietary information regarding Humanscale's annual U.S. sales of adjustable keyboard support systems; Confidential Exhibits 12-13 contain proprietary information regarding Humanscale's investments in the domestic industry.

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February 10, 2009  
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The information described above qualifies as confidential business information pursuant to Rule 201.6(a) because:

- a. it is not available to the public;
- b. unauthorized disclosure of such information could cause substantial harm to the competitive position of Humanscale; and
- c. its disclosure could impair the Commission's ability to obtain information necessary to perform its statutory function.

Thank you for your attention to this matter.

Respectfully submitted,



Y. James Adduci

VJA:jvs  
Enclosures  
HMN700109

UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.

IN THE MATTER OF

Certain Adjustable Keyboard Support  
Systems and Components Thereof

Investigation No. 337-TA-\_\_\_\_

**COMPLAINT**

**COMPLAINANT:**

HUMANSCALE CORPORATION  
11 East 26<sup>th</sup> Street, 8<sup>th</sup> Floor  
New York, New York 10010  
(212) 725-4749

**PROPOSED RESPONDENTS:**

COMPX INTERNATIONAL, INC.  
5430 LBJ Freeway  
Suite 1700  
Dallas, Texas 75240

COMPX WATERLOO  
501 Manitou Drive  
Kitchener, Ontario  
Canada, N2C 1L2

**COUNSEL FOR COMPLAINANT:**

V. James Adduci II  
Michael L. Doane  
Katherine R. Lahnstein-Bertocci  
ADDUCI, MASTRIANI & SCHAUMBERG, LLP  
1200 Seventeenth Street, NW, Fifth Floor  
Washington, DC 20036  
Telephone: (202) 467-6300

*Counsel for Complainant  
Humanscale Corporation*

Dated: February 10, 2009

## EXHIBITS

1. Certified copy of U.S. Patent No. 5,292,097
2. Certified copy of assignment to Humanscale Corporation (Softview Computer Products Corp.)
3. True and accurate copy of the Certificate of Amendment filed with the New York Department of State
4. Certified copy of Reexamination Certificate No. 5,292,097 C1
5. Exemplary Waterloo / CompX Operation Manual for the Ovation Arm product
6. Claim chart applying independent Claim 7 of the '097 patent to Respondents' product
  - Attachment A: Specification for Ovation Arm
  - Attachment B: Detail Photograph of accused product
7. CompX International 2007 Annual Report
8. CompX International U.S. Sales Offices (webpage)
9. CompX Waterloo Invoice (CONFIDENTIAL)
10. Claim chart applying independent Claim 7 of the '097 patent to the 5G keyboard support system
  - Attachment A: Humanscale 5G Keyboard Support User Instructions
  - Attachment B: Humanscale Keyboard Installation Instructions
  - Attachment C: Detail Photograph of 5G Keyboard Support System
11. Humanscale's Annual U.S. Sales of Adjustable Keyboard Support Systems (CONFIDENTIAL)
12. Humanscale's U.S. Plant and Equipment Used in The Production of Adjustable Keyboard Support Systems (CONFIDENTIAL)
13. Humanscale's U.S. Personnel Attributable to Adjustable Keyboard Support Systems (CONFIDENTIAL)
14. Humanscale's U.S. Engineering and Ergonomics Personnel Attributable to Adjustable Keyboard Support Systems (CONFIDENTIAL)

## APPENDICES

- A. Prosecution history of U.S. Patent No. 5,292,097 (Application Serial No. 07/907,483)
- B. Reexamination prosecution history of U.S. Patent No. 5,292,097 C1 (Request for Reexamination No. 90/007,256)
- C. Patent and technical references identified in the prosecution history of the application leading to the issuance of U.S. Patent No. 5,292,097 and patent and technical references identified in the reexamination prosecution history of U.S. Patent No. 5,292,097 C1 (Request for Reexamination No. 90/007,256)

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## **I. INTRODUCTION**

1. Pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, Complainant Humanscale Corporation ("Humanscale" or "Complainant") files this Complaint based on the unlawful importation into the United States, the sale for importation into the United States and/or the sale within the United States after importation of certain adjustable keyboard support systems and components thereof by proposed Respondents CompX International, Inc. ("CompX International") and CompX Waterloo ("Waterloo") (collectively "CompX" or "Respondents").

2. The accused products infringe at least Claims 7, 10, 26, 27, 34, 37, 38, and 44, of U.S. Patent No. 5,292,097 C1, as re-examined ("the '097 patent").

3. Humanscale seeks, as relief, a permanent limited exclusion order barring from entry into the United States infringing adjustable keyboard support systems and components thereof manufactured by or on behalf of Respondents. Humanscale also seeks, as relief, a permanent cease and desist order prohibiting the importation, sale, offer for sale, advertising, marketing, distributing, or the solicitation of any sale by Respondents of certain adjustable keyboard support systems and components thereof encompassed by the asserted claims of the patent at issue.

## **II. THE PARTIES**

### **A. Complainant**

4. Complainant Humanscale is a New York corporation with its principal place of business located at 11 East 26<sup>th</sup> Street, 8<sup>th</sup> floor, New York, New York 10010.

5. Incorporated in 1986, Humanscale, formerly known as Softview Computer Products Corp., has been committed to designing and manufacturing products that create a healthier, more comfortable and more productive work environment. Products offered by

Humanscale combine uncompromising function and honest aesthetics with ultimate ease-of-use. Due to its resolute commitment to excellence, Humanscale has gained recognition as the leading manufacturer of ergonomic office products.

6. Since entering the articulating keyboard support market in 1997, Humanscale has quickly seized the worldwide leadership in keyboard support sales. Humanscale retains this leadership today, with its fifth-generation keyboard support products. Several generations of Humanscale keyboard support systems have won praise for their revolutionary functionality and sleek design, as well as receiving numerous awards in the ergonomic manufacturing field.

**B. Proposed Respondents**

7. On information and belief, CompX International is a Delaware corporation with its principal place of business located at 5430 LBJ Freeway, Suite 1700, Dallas, Texas 75240.

8. On information and belief, CompX International is an importer and distributor of certain adjustable keyboard support systems and components thereof that infringe the '097 patent.

9. On information and belief, Waterloo is a wholly-owned Canadian subsidiary of CompX International with its principal place of business located at 501 Manitou Drive, Kitchener, Ontario, Canada N2C 1L2.

10. On information and belief, Waterloo's facilities are part of CompX International's furniture components business segment. Waterloo is responsible for manufacturing, selling, distributing, and servicing the CompX ErgonomX line of products, which includes, among others, certain adjustable keyboard support systems and components thereof that infringe the '097 patent.

11. On information and belief, Waterloo and/or CompX International imports and/or sells for importation into the United States and/or sells after importation in the United States adjustable keyboard support systems and components thereof.

### **III. THE PRODUCTS AT ISSUE**

12. The products at the heart of the proposed investigation are keyboard support systems, particularly, ergonomic computer keyboard support systems that are adjustable for minimizing an individual worker's fatigue and improving efficiency.

13. An adjustable keyboard support system is a vital component of an ergonomic workstation. For people who work on a computer for two or more hours per day, a high-end articulating keyboard support system can provide serious protection from a variety of musculoskeletal disorders, including Carpal Tunnel Syndrome, neck pain, as well as upper and lower back pain.

14. The adjustable keyboard support systems at issue have a swing-link suspension for adjusting a support platform in a range of desired heights without the aid of knobs, levers, tightening screws or any other external holding devices.

15. Humanscale has been the market leader in adjustable keyboard support systems industry for the last five years. Humanscale's products are pioneering with respect to intuitive adjustability and knee obstruction elimination. Each of Humanscale's support systems is designed to ensure that a user operates a keyboard and a mouse within a "Neutral Reach Zone," thereby encouraging a safe and sustainable working posture.

16. Like Complainant, Respondents manufacture multiple versions of their keyboard support systems and components thereof with particular needs in mind, such as workspace, angle, and customers' physical attributes.

17. Respondents' product "Ovation Arm" is a keyboard support system that is advertised as having a low-profile design, dual swivel option and 360-degree swivel. The Ovation Arm allows the user to make height adjustments for comfort, provides leg room and allows the keyboard tray to be parallel to a desk, even when it is corner-mounted.

18. Respondents' product "Momentum Arm" is a keyboard support system that is advertised as having a low-profile design, dual swivel option and 360-degree swivel. Additionally, the Momentum Arm, featuring a 1/2" standard length neck, allows the user to make precise height adjustments for comfort, provides leg room, allows the keyboard tray to be parallel to a desk, even when it is corner-mounted, accommodates straight desktops with limited space, is fully retractable when not in use and promotes a healthier negative tilt of keyboard.

#### **IV. THE PATENT AT ISSUE**

##### **A. The Asserted Patent**

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

20. The original United States Patent No. 5,292,097 ("U.S. Patent No. 5,292,097") resulted from Application No. 907,483, filed July 1, 1992 as a continuation-in-part of Application No. 607,448, filed October 31, 1990, now abandoned. A certified copy of U.S. Patent No. 5,292,097 is attached to the Complaint as Exhibit 1.

21. Edwin R. Russell is the named inventor of U.S. Patent No. 5,292,097. Humanscale (then Softview Computer Products Corp.) became the owner of U.S. Patent No. 5,292,097 by assignment from Russell and Trenton PTY Ltd., made on May 23, 1998, and

recorded on June 3, 1998, (Reel/Frame 009214/0398)<sup>1</sup>. A certified copy of the assignment is attached to the Complaint as Exhibit 2.

22. Complainant changed its name from Softview Computer Products Corp. to Humanscale Corporation on August 25, 2000. It subsequently filed a Certificate of Amendment of the Certificate of Incorporation to reflect its name change with the New York Department of State on January 3, 2001. A true and accurate copy of the Certificate of Amendment is attached to the Complaint as Exhibit 3.

23. U.S. Patent No. 5,292,097 has had one reexamination request entered, by Humanscale, with the U.S. Patent and Trademark Office ("USPTO") on October 13, 2004. As a result of the re-examination, Claims 1, 2, 5, 16, 19, 30-33, 39 and 46 were cancelled. Claims 3, 4, 6, 7, 10, 11, 14, 17, 18, 20, 21, 26, 34, 40-42 and 47 were determined to be patentable as amended. Dependent claims 8, 9, 12, 13, 15, 22-25, 27-29, 35-38, 43-45, and 48-52 were determined to be patentable. Reexamination Certificate No. 5,292,097 C1 issued on August 26, 2008. A certified copy of this certificate is attached to the Complaint as Exhibit 4.

24. Together with this Complaint, Complainant has filed a certified copy and three (3) additional copies of the prosecution history of U.S. Patent No. 5,292,097 (Application Serial No. 907,483), as Appendix A; a certified copy and three (3) additional copies of the reexamination prosecution history of U.S. Patent No. 5,292,097 C1 (Request for Reexamination No. 90/007,256), as Appendix B; four (4) copies each of the patent and technical reference identified in the prosecution history of the application leading to the issuance of U.S. Patent No. 5,292,097

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<sup>1</sup> In 1993 Russell assigned a partial interest in U.S. Patent No. 5,292,097 to Trenton PTY Ltd. (Reel/Frame 006800/0698).

and the reexamination prosecution history of U.S. Patent No. 5,292,097 C1 (Request for Reexamination No. 90/007,256), as Appendix C.

**B. Foreign Counterpart Patents**

25. U.S. Patent No. 5,292,097 has the following foreign counterparts:

COUNTRY/ DESIGNATED STATES	APPLICATION NUMBER	STATUS	PATENT/ PUBLICATION NUMBER
Australia	1999040234	Filed May 19, 1999	N/A (lapsed)
AE AL AM AT AU AZ BA BB BG BR BY CA CH CN CU CZ DE DK EE ES FI GB GD GE GH GM HR HU ID IL IN IS JP KE KG KP KR KZ LC LK LR LS LT LU LV MD MG MK MN MW MX NO NZ PL PT RO RU SD SE SG SI SK SL TJ TM TR TT UA UG US UZ VN YU ZA ZW; AP (GH GM KE LS MW SD SL SZ UG ZW); EA (AM AZ BY KG KZ MD RU TJ TM); EP (AT BE CH CY DE DK ES FI FR GB GR IE IT LU MC NL PT SE); OA (BF BJ CF CG CI CM GA GN GW ML MR NE SN TD TG) <sup>2</sup>	PCT Filing Number: PCT/AU99/00384  Priority Data: May 19, 1998  International Pub. No.: WO/1999/059446	Filed November 25, 1999	
Australia	2003906462	Filed November 24, 2003	N/A (lapsed)
Canada	2,546,291	Filed November 22, 2004	N/A

<sup>2</sup> These are the states designated pursuant to the Patent Cooperation Treaty.

<p>AE, AG, AL, AM, AT, AU, AZ, BA, BB, BG, BR, BW, BY, BZ, CA, CH, CN, CO, CR, CU, CZ, DE, DK, DM, DZ, EC, EE, EG, ES, FI, GB, GD, GE, GH, GM, HR, HU, ID, IL, IN, IS, JP, KE, KG, KP, KR, KZ, LC, LK, LR, LS, LT, LU, LV, MA, MD, MG, MK, MN, MW, MX, MZ, NA, NI, NO, NZ, OM, PG, PH, PL, PT, RO, RU, SC, SD, SE, SG, SK, SL, SY, TJ, TM, TN, TR, TT, TZ, UA, UG, US, UZ, VC, VN, YU, ZA, ZM, ZW. ARIPO (BW, GH, GM, KE, LS, MW, MZ, NA, SD, SL, SZ, TZ, UG, ZM, ZW); EAPO (AM, AZ, BY, KG, KZ, MD, RU, TJ, TM); EPO (AT, BE, BG, CH, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HU, IE, IS, IT, LU, MC, NL, PL, PT, RO, SE, SI, SK, TR); OAPI (BF, BJ, CF, CG, CI, CM, GA, GN, GQ, GW, ML, MR, NE, SN, TD, TG).<sup>3</sup></p>	<p>PCT Filing Number: PCT/US2004/039148</p> <p>Priority Data: 2003-906642</p> <p>International Pub. No: WO2005/052876</p> <p>National Entry: 2006-05-16</p>		
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26. There are no other foreign patents or foreign patent applications pending, filed, abandoned, withdrawn, or rejected relating to U.S. Patent No. 5,292,097.

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<sup>3</sup> These are the states designated pursuant to the Patent Cooperation Treaty.

**C. Licenses Under the Patent At Issue**

27. The '097 patent is not subject to any license at this time.

**D. Non-Technical Description of the Patented Technology**

28. The asserted patent relates to an adjustable keyboard system having a swing-link suspension for adjusting a support platform in a range of desired positions without the aid of knobs, levers, tightening screws or any other external holding devices.

29. Persons working with keyboards, such as for computer systems, often are limited in positions available for using the keyboards. At best, the keyboards were, for many years, adjustable in only a few positions. Not only were traditional keyboard arrangements ergonomically inadequate, but keyboard operators were increasingly becoming afflicted with repetitive stress injuries, which are both debilitating and increasingly prevalent.

30. Thus, at the time of patenting, there existed a very real and pressing need for a solution that would allow for the ergonomic arrangement of a keyboard support.

31. There were some prior art attempts to provide adjustable holders for keyboards, typically allowing the keyboard support platform to be adjusted through a few predetermined positions. The '097 patent, however, allows for the intuitive adjustment of the keyboard support platform to any position within the 6.25" range from 5" below the mount to 1.25" above the mount.

32. Unlike older generation keyboard/mouse solutions, the keyboard support system implementing the innovations disclosed in the '097 patent is designed to ensure that nearly all users are able to work consistently in the area that can be conveniently reached with a sweep of the forearm while the upper arm hangs in a natural position at the side, such that the users maintain a low-risk, sustainable posture.

33. The patented technology provides a number of embodiments for allowing a keyboard support platform to move relative to a base in a generally parallel orientation throughout a plurality of positions.

34. The support includes a pair of parallel lengths pivotally connected at their ends to the support platform and the base.

35. A locking mechanism is provided for locking the support platform in any of a plurality of positions, accomplished by an engagement between a locking member on one of the support lengths and a cooperating locking member carried by one of the other elements, without the need for knobs, levers, tightening screws or any other external holding devices.

#### **IV. UNLAWFUL AND UNFAIR ACTS OF THE RESPONDENTS-PATENT INFRINGEMENT**

36. On information and belief, Respondents' keyboard support systems and components thereof that are sold for importation, imported, and/or sold after importation in the United States directly infringe at least Claims 7, 10, 26, 27, 34, 37, 38, and 44 of the '097 patent.

37. On information and belief, Respondents' keyboard support systems and components thereof that are sold for importation, imported, and/or sold after importation in the United States also contribute to and/or induce the infringement of at least Claims 7, 10, 26, 27, 34, 37, 38, and 44 of the '097 patent. Respondents contributorily infringe and/or induce infringement of the '097 patent when consumers operate Respondents' accused products in the United States.

38. Respondents have been aware of technology embodied by U.S. Patent No. 5,292,097, and its applicability to the accused products, for over ten years. In September 1998, Humanscale (then known as Softview Computer Products) brought suit against Waterloo Furniture Components (now owned by CompX International), alleging infringement of U.S.

Patent No. 5,292,097 in the U.S. District Court for the Southern District of New York. In October 1998, Humanscale brought a second suit against Waterloo Furniture Components (now owned by CompX International), alleging infringement of U.S. Patent No. 5,292,097 in the U.S. District Court for the Southern District of New York.

39. By service of this Complaint, Respondents are on further notice that the technology practiced by their accused products is both patented and infringing and comprises a material part of the invention claimed in the '097 patent. Their infringing keyboard support systems and components thereof are not staple articles or commodities of commerce suitable for substantial non-infringing use and, thus, are specially adapted for use in practicing the invention claimed in the '097 patent.

40. Further, Respondents intend for the accused products to be operated in a way which, when so operated, would infringe the '097 patent. On information and belief, Respondents provide operation manuals with their infringing keyboard support systems that offer explicit guidance as to how to use the products in a manner that infringes the '097 patent. An example of a publicly available operation manual is attached to the Complaint as Exhibit 5. On information and belief, Respondents similarly encourage the infringing use of the accused products through the offering of other written guides, as well as through demonstrations and training. Respondents knew or should have known that such activities would induce infringement.

41. A claim chart applying independent Claim 7 of the '097 patent to one of Respondents' accused products is attached to the Complaint as Exhibit 6.

**V. SPECIFIC INSTANCES OF IMPORTATION AND SALE**

42. On information and belief, CompX International and/or Waterloo imports and/or sells for importation into the United States and/or sells after importation in the United States adjustable keyboard support systems and components thereof, that infringe the patent at issue.

43. On information and belief, Respondents' customers also import into the United States and/or sell after importation components of keyboard support systems that infringe the patent at issue. Humanscale will pursue information in discovery to verify this assertion and reserves the right to add Respondents' customers to this investigation if such information is forthcoming.

44. Respondents' manufacturing facility dedicated to the production of the accused keyboard support systems and components thereof is located in Canada. *See* attached Exhibit 7 at 11.

45. Consumers can purchase the keyboard support systems manufactured by Respondents from either a third-party website or any one of multiple U.S. based CompX sales representatives. *See* attached Exhibit 8.

46. Additionally, on information and belief, Respondents supply or will supply components for the infringing keyboard support systems.

47. Attached to this Complaint as Confidential Exhibit 9 is a purchase invoice for Momentum infringing keyboard support systems, sold by CompX Waterloo and shipped to the United States.

**VI. CLASSIFICATION OF THE INFRINGING PRODUCTS UNDER THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES**

48. On information and belief, the infringing keyboard support systems and components thereof may be classified at least under the headings 9403.10.00 "Metal furniture of

a kind used in offices," and 9403.20.00 "Other metal furniture " of the Harmonized Tariff Schedule of the United States.

## **VII. RELATED LITIGATION**

49. There is no current related litigation.

50. In September 1998, Humanscale (then known as Softview Computer Products) brought suit against Waterloo Furniture Components (now owned by CompX International), alleging infringement of U.S. Patent No. 5,292,097, in the U.S. District Court for the Southern District of New York. The case was voluntarily dismissed and terminated without prejudice on January 28, 2000, so that Humanscale could pursue the reexamination discussed *supra* at paragraph 23.

51. In October 1998, Humanscale brought suit against Waterloo Furniture Components (now owned by CompX International), alleging infringement of U.S. Patent No. 5,292,097, in the U.S. District Court for the Southern District of New York. This case was also voluntarily dismissed and terminated without prejudice on January 28, 2000, so that Humanscale could pursue the reexamination discussed *supra* at paragraph 23.

## **VIII. DOMESTIC INDUSTRY**

52. A domestic industry, as defined by 19 U.S.C. § 1337(a)(3), exists with respect to Humanscale's activities in the United States that exploit the patent at issue through Humanscale's significant investment in plant and equipment, significant employment of labor and capital, and substantial investment in the exploitation of the '097 patent.

### **A. Technical Prong**

53. A wide range of adjustable keyboard support systems and components thereof offered by Humanscale were designed, developed and manufactured specifically to reduce to practice the innovations disclosed in the '097 patent.

54. A representative claim chart demonstrating how the 5G keyboard support system practices at least claim 7 of the '097 patent is attached to the Complaint as Exhibit 10.

**B. Economic Prong**

**1. Significant Investment in Plant and Equipment**

55. Over the past four years, Humanscale has sold millions of dollars worth of its adjustable keyboard support systems and components thereof in the U.S.

56. Further details regarding Humanscale's U.S. sales numbers are set forth in Confidential Exhibit 11.

57. Humanscale has made significant investments in its plants and equipment in the United States that are devoted, in whole or in part, to manufacturing, assembling, quality control testing, packaging and shipping the keyboard support systems and components thereof, that employ and exploit the technology covered by one or more claims of the patent at issue.

58. The keyboard support systems are assembled, quality control tested, packaged at and shipped from Humanscale's plant located in Piscataway, New Jersey. Certain portions of the keyboard support systems are also manufactured at this facility. Furthermore, Humanscale owns another facility located in Fresno, California, a portion of which is devoted to the partial assembly, packaging, and shipping of the products at issue.

59. Humanscale has also made substantial investments in equipment in the United States used to manufacture, assemble, package, and ship the keyboard support systems and components thereof.

60. Further details regarding Humanscale's investment in plants and equipment are set forth in Confidential Exhibit 12.

## **2. Significant Employment of Labor and Capital**

61. As of 2009, Humanscale has no fewer than 500 permanent employees in the United States, a significant portion of which are involved in the design, production, sales, promotion, customer service and/or support of the keyboard support systems and components thereof that employ and exploit the technology covered by one or more claims of the patent at issue.

62. Humanscale employs at least two manufacturing engineers, two skilled machine operators and twenty-one unskilled workers specifically dedicated to the manufacturing, assembly, packaging, and shipping of the keyboard support systems and components thereof<sup>4</sup>.

63. Further details regarding Humanscale's employment of labor and capital are set forth in Confidential Exhibit 13.

## **3. Substantial Investment in the Exploitation of the Patent at Issue**

64. Humanscale has made and continues to make substantial investments in the United States in engineering, research and development related to the keyboard support systems that employ and exploit the technology covered by one or more claims of the patent at issue.

65. As a leading manufacturer of ergonomic office products, including keyboard support systems and components thereof, Humanscale constantly strives to improve its products' design and functionality through investments in engineering, research and development.

66. Very early on, recognizing the potential of the initial product offered by Edwin R. Russell, Humanscale readily invested in supporting the effort of bringing the product to

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<sup>4</sup> The number of these employees are full time equivalents (FTEs), based on the percentage of revenue attributable to keyboard support systems.

manufacture. In order to accomplish that, Humanscale first hired an outside industrial designer and outside engineering firm which it retained for several years to work in the U.S. on its original standard-bearer, the 2G negative-tilt keyboard support system. Humanscale also occasionally hired U.S.-based freelance engineers to supplement its efforts in bettering its adjustable keyboard support systems.

67. Enhanced characteristics of the latest models of adjustable keyboard support systems are the direct result of Humanscale's heavy investments in the technology at issue. Humanscale's Design Studio, located in New York, NY, employs design engineers and industrial designers who dedicate their efforts to further refining the products embodying the '097 patent. To ensure that all the designs developed by its Design Studio are based on the latest human factors research and knowledge, Humanscale invests in its own ergonomic team.

68. Adjustable keyboard support systems and components thereof are subject to strict control regulations enforced by manufacturing and quality control engineers retained by Humanscale at its U.S. production facilities.

69. Further details regarding Humanscale's investment in the exploitation of the patent at issue are set forth in Confidential Exhibit 14.

## **IX. RELIEF**

**WHEREFORE**, by reason of the foregoing, Complainant requests that the United States International Trade Commission:

- (a) institute an immediate investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, with respect to violations of that section based upon the importation into the United States, the sale for importation into the United States, and/or the sale within the United States after importation by Respondents of adjustable keyboard support systems and components

thereof that infringe Humanscale's valid and enforceable U.S. Patent No. 5,292,097 C1;

- (b) schedule and conduct a hearing on said unlawful acts and, following said hearing;
- (c) issue a permanent limited exclusion order, pursuant to 19 U.S.C. § 1337(d), forbidding entry into the United States of adjustable keyboard support systems and components thereof manufactured by or on behalf of Respondents that infringe the patent at issue;
- (d) issue a permanent cease and desist order, pursuant to 19 U.S.C. § 1337(f), prohibiting Respondents from importing, selling, offering for sale (including via the Internet or electronic mail), advertising (including via the Internet or electronic mail), distributing or soliciting any adjustable keyboard support systems and components thereof encompassed by the claims of the patent at issue; and
- (e) issue such other orders and further relief as the Commission deems just and proper based upon the facts determined by the investigation and under the authority of the Commission.

Dated: February 10, 2009

Respectfully submitted,



V. James Adduci II

Michael L. Doane

Katherine R. Lahnstein-Bertocci

ADDUCI, MASTRIANI & SCHAUMBERG, LLP

1200 Seventeenth Street, N.W., Fifth Floor

Washington, DC 20036

(202) 467-6300

*Counsel for Humanscale Corporation*

HMN700209

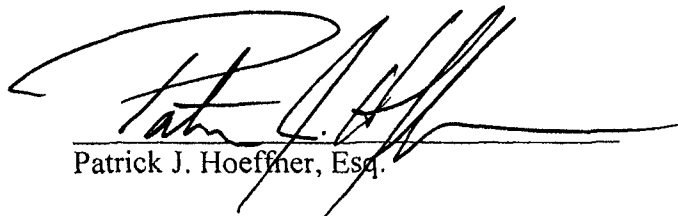
VERIFICATION OF COMPLAINT

I, Patrick J. Hoeffner, Esq. declare, in accordance with 19 CFR §§ 210.4 and 210.12(a), under penalty of perjury that the following statements are true:

1. I am the General Counsel and Director of Intellectual Property for Humanscale Corporation and am duly authorized to sign this Complaint on behalf of Complainant;
2. I have read the Complaint and am aware of its contents;
3. The Complaint is not being presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation;
4. To the best of my knowledge, information, and belief founded upon reasonable inquiry, the claims and legal contentions of this Complaint are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
5. The allegations and other factual contentions in the Complaint have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 8, 2009.

  
Patrick J. Hoeffner, Esq.

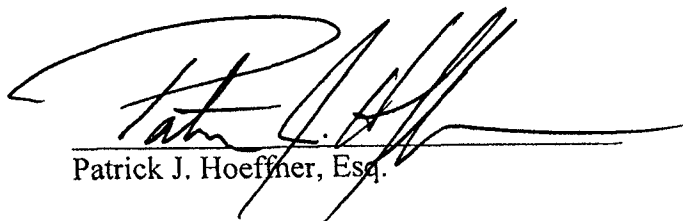
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3. The Complaint is not being presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation;
4. To the best of my knowledge, information, and belief founded upon reasonable inquiry, the claims and legal contentions of this Complaint are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
5. The allegations and other factual contentions in the Complaint have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

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Executed on February 8, 2009.

  
Patrick J. Hoeffner, Esq.