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File No.

FEDERAL COURT

BETWEEN:

VERO UK LIMITED and VERO SOFTWARE, INC.

PLAINTIFFS

AND:

SHERWOOD INNOVATIONS INC.

DEFENDANT

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you is required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules* serve it on the Plaintiffs' solicitor or, where the Plaintiffs do not have a solicitor, serve it on the Plaintiffs, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada or the United States or WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the *Federal Courts Rules*.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Dated:

Issued by:

(Registry Officer)

Address of

Local office:

TO: The Administrator
 THE FEDERAL COURT OF CANADA

AND TO: Sherwood Innovations Inc.
 125 Bethridge Road
 Toronto, Ontario
 Canada M6W 1N4

CLAIM

1. THE PLAINTIFFS CLAIM:

- (a) a declaration that the Defendant has infringed and is deemed to infringe the copyright in the Copyrighted Works, as defined below, contrary to sections 3 and 27 of the *Copyright Act*;
- (b) an interlocutory and permanent injunction restraining the Defendant by itself and its employees, partners, agents, officers, directors, related, subsidiary and/or parent corporations, or otherwise, from directly or indirectly doing any of the following acts without the Plaintiffs' explicit permission or authorization:
 - (i) infringing copyright in the Copyrighted Works, or authorizing any such acts;
 - (ii) producing or reproducing the Copyrighted Works or any substantial part thereof in any material form whatever, or authorizing any such acts;
 - (iii) selling or renting out a copy of the Copyrighted Works;
 - (iv) distributing a copy of the Copyrighted Works to such an extent as to prejudicially affect the Plaintiffs; and/or
 - (v) possessing a copy of the Copyrighted Works for the purpose of doing anything referred to herein;
- (c) damages and an accounting of profits, in an amount which may exceed \$50,000;
- (d) exemplary, aggravated and punitive damages pursuant to section 34 of the *Copyright Act*;
- (e) the Plaintiffs' costs of the action on a solicitor-client scale together with the Plaintiffs' disbursements;
- (f) pre-judgment and post-judgment interest on such damages or profits from the date they arose to the date of payment;
- (g) all applicable taxes; and
- (h) such further and other relief as this Honourable Court may deem just.

FACTUAL BASIS

The Parties

2. The Plaintiff Vero UK Limited (“**Vero UK**”) formerly known as Vero International Software UK Ltd., is a company duly incorporated under the laws of England, having a principal place of business located at 1370 Montpellier Court, Gloucester Business Park, Gloucester, GL3 4AH, United Kingdom.
3. The Plaintiff Vero Software Inc. (“**Vero US**”) is a company having a principal place of business at 3800 Palisades Drive, Tuscaloosa, Alabama, 35405, USA.
4. The Defendant, Sherwood Innovations Inc. (“**Sherwood Innovations**” or the “**Defendant**”) is a company duly incorporated under the laws of Ontario, having a business address of 125 Bethridge Road, Toronto, Ontario, Canada M6W 1N4. Sherwood Innovations does business under the trade names Sherwood Protective Styling, Sherwood Innovations, and Sherwood Tool & Die.

Business of the Plaintiff

5. Vero UK is in the business of developing and distributing software for aiding the design and manufacturing processes for tooling, production engineering, sheet metal, metal fabrication, and mold injection, which are widely used in the fabrication, construction, engineering, and other industries. More particularly, for the purposes of this proceeding, Vero UK is the owner of copyright in artistic and literary works comprising the source code and object code versions and associated user documentation of VISI, a leading CAD/CAM software product for the mold & die manufacturing industry (the “**Copyrighted Works**”).
6. Vero UK releases and released regular updates and new versions of its software products, including the VISI software comprising the Copyrighted Works. For the purposes of this proceeding, Vero UK released version 2021 of VISI on or around April 6, 2020. The “Copyrighted Works” as defined herein refer to version 2021 of VISI, and any other versions of Vero UK’s software used and reproduced by the Defendant.
7. Vero US is Vero UK’s exclusive distributor and the exclusive licensee of Vero UK’s copyright in the Copyrighted Works in the United States and Canada. Vero US offers for license and licenses copies of the VISI software comprising the Copyrighted Works for use by others in Canada and

the United States, and earns revenue from such licensing. Vero US is the exclusive re-seller of licenses to Vero UK's copyright in the Copyrighted Works in Canada and the United States.

8. Vero UK has an affiliate called Vero Italia Srl, based in Italy ("**Vero Italia**"). Vero Italia conducts research and development activities for Vero UK in the area of software product development for the mold and die manufacturing industry. In turn, Vero Italia hires consultants from time to time to assist with its research and development activities performed for Vero UK. For the purposes of this proceeding, Vero Italia has contracts with Mathematike Srl Unipersonale ("**Mathematike**") and Caspasian Srl Unipersonale ("**Caspasian**") relating to the development of the VISI software comprising the Copyrighted Works.
9. The Copyrighted Works and each version thereof are original literary and artistic works authored by individuals under a contract of service for either Vero UK, Vero Italia, Mathematike or Caspasian, as the case may be, during the course of their employment with such company, or by individuals with an obligation to assign copyright in such works to Vero UK, Vero Italia, Mathematike or Caspasian, as the case may be, and who did in fact assign copyright in such works to such company. More particularly, version 2021 of the VISI software and associated user documentation was authored by the following individuals, each of whom is a citizen of the United Kingdom, Italy or other country that is party to the Berne Convention:
 - (a) Marco Cafasso, a citizen of Italy and Alberto Scarduelli, a citizen of Italy, each of whom was an employee of Vero Italia or had an obligation to assign such works to Vero Italia (and did in fact assign copyright in such works to Vero Italia) at the time that version 2021 of the VISI software and associated user documentation were authored;
 - (b) Gerry O'Driscoll, a citizen of the United Kingdom, who was an employee of Vero UK or had an obligation to assign such works to Vero UK (and did in fact assign copyright in such works to Vero UK) at the time that version 2021 of the VISI software and associated user documentation were authored;
 - (c) Massimo Schivalocchi, a citizen of Italy, who was an employee of Mathematike or had an obligation to assign such works to Mathematike (and did in fact assign copyright in such works to Mathematike) at the time that version 2021 of the VISI software and associated user documentation were authored; and
 - (d) Vincenzo Basile, a citizen of Italy, who was an employee of Caspasian or had an obligation to assign such works to Caspasian (and did in fact assign copyright in such

works to Caspasian) at the time that version 2021 of the VISI software and associated user documentation were authored.

10. In turn, Caspasian, Mathematike and Vero Italia have each assigned all copyright in version 2021 of the VISI software and associated user documentation to Vero UK. Accordingly, Vero UK is the sole owner of the copyright in and to the Copyrighted Works in Canada, pursuant to the *Copyright Act*.
11. As owner of the Copyrighted Works, pursuant to section 3 of the *Copyright Act*, Vero UK has the exclusive right to produce or reproduce the Copyrighted Works or any substantial part thereof, in any material form whatever, and the exclusive right to authorize such acts by others. Vero UK has authorized and licensed Vero US to carry on business as the exclusive re-seller of licenses to Vero UK's copyright in the Copyrighted Works in Canada and the United States, and the exclusive distributor of reproductions of Vero UK's Copyrighted Works in Canada and the United States.

The Defendant's Infringing Activities

12. The Defendant is in the business of producing and manufacturing decorative trims for exterior and interior elements of the car. The Defendant operates a facility that utilizes computerized CAD/CAM drafting technology, including Vero UK's VISI software.
13. Commencing on dates unknown to the Plaintiffs but known to the Defendant, but from at least as early as September 2022, the Defendant has, without the authorization of the Plaintiffs, installed on its computer systems, used, and reproduced, unauthorized reproductions of at least version 2021 of Vero's VISI software and associated user documentation, which the Defendant has installed on its computers systems, used, and reproduced on computers associated with the Defendant's business, in Canada, for a commercial purpose.
14. The Defendant was at all material times aware, knew or had reasonable grounds for knowing that copyright subsisted in the Copyrighted Works and that Vero UK is the owner of the Copyrighted Works. Without limiting the generality of the foregoing, all copies of the Plaintiffs' Copyrighted Works, including the copies of the Copyrighted Works used and reproduced by the Defendant, are prominently marked with a copyright notice stating that Vero UK is the owner of copyright in the Copyrighted Works.
15. The acts of the Defendant as set out herein were done with the full knowledge of the rights of the Plaintiffs. The Plaintiffs have requested that the Defendant cease its infringing activities and

take a license to use its infringing copies of the Copyrighted Works in Canada, but the Defendant has refused to do so and has knowingly and willfully continued to infringe upon the rights of the Plaintiffs.

16. Moreover, in connection with the installation and use of unauthorized reproductions of at least version 2021 of Vero's VISI software and associated user documentation on the Defendant's computers systems, the Defendant or the Defendant's employees or representatives have, on the Defendant's behalf and for the benefit of the Defendant, bypassed, removed, deactivated, and/or impaired the operation of the license check and license verification functionality of Vero's VISI software, which is a "technological protection measure" within the meaning of section 41 of the *Copyright Act*. In so doing, the Defendant or the Defendant's employees or representatives have, on the Defendant's behalf and for the benefit of the Defendant, circumvented technological protection measures in the Copyrighted Works, contrary to section 41.1(a) of the *Copyright Act*. As such, pursuant to section 41.1(2) of the *Copyright Act*, Vero UK, as the owner of copyright in the Copyrighted Works, is entitled to all remedies available at law for the infringement of copyright in the Copyrighted Works against the Defendant.
17. The Plaintiffs are unaware of the full extent of the Defendant's acts of infringement. Full particulars of the Defendant's acts of infringement are within the knowledge of the Defendant and not within the knowledge of the Plaintiffs. The Plaintiffs claim in respect of all infringing activities of the Defendant.
18. By reason of the aforesaid acts of the Defendant, the Defendant has made and will make a profit, and the Plaintiffs have suffered and will continue to suffer damages, until the Defendant is restrained.
19. The aforesaid activities of the Defendant will continue and/or recur unless restrained by this Honourable Court.
20. This action is not being proceeded with as a simplified action as the claim is not exclusively for monetary relief in an amount not exceeding \$50,000, exclusive of interest and costs.
21. The Plaintiffs propose that this action be tried at Vancouver, British Columbia.

Dated: January 9, 2024



GOWLING WLG (CANADA) LLP
Barristers & Solicitors
Suite 2300, 550 Burrard Street

Vancouver, B.C. V6C 2B5

R. Nelson Godfrey
Nick James

Telephone: 604-683-6498
Facsimile: 604-683-3558

Solicitors for the Plaintiffs

TO: The Administrator
THE FEDERAL COURT OF CANADA

AND TO: Sherwood Innovations Inc.
125 Bethridge Road
Toronto, Ontario
Canada M6W 1N4

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Suite 2300, 550 Burrard Street
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Telephone: 604-683-6498
Facsimile: 604-683-3558

Solicitors for the Plaintiffs