

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**GEOTAG, INC.,**

**Plaintiff,**

v.

**2:10-CV-572**

**STARBUCKS CORP., et al.,**

**Defendants.**

**DEFENDANT DOCTOR'S ASSOCIATES INC.'S ANSWER AND COUNTERCLAIMS  
TO PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT**

Defendant Doctor's Associates Inc. d/b/a SUBWAY<sup>®</sup> ("DAI") files this Answer and Counterclaims to Plaintiff GeoTag, Inc.'s ("GeoTag") Complaint for Patent Infringement (Dkt. No. 1) ("Complaint") as follows:

**PARTIES**

1. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Complaint and, on that basis, denies all such allegations.
2. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Complaint and, on that basis, denies all such allegations.
3. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Complaint and, on that basis, denies all such allegations.
4. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the Complaint and, on that basis, denies all such allegations.
5. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the Complaint and, on that basis, denies all such allegations.

6. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 of the Complaint and, on that basis, denies all such allegations.

7. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the Complaint and, on that basis, denies all such allegations.

8. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Complaint and, on that basis, denies all such allegations.

9. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Complaint and, on that basis, denies all such allegations.

10. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Complaint and, on that basis, denies all such allegations.

11. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Complaint and, on that basis, denies all such allegations.

12. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Complaint and, on that basis, denies all such allegations.

13. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 of the Complaint and, on that basis, denies all such allegations.

14. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14 of the Complaint and, on that basis, denies all such allegations.

15. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Complaint and, on that basis, denies all such allegations.

16. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Complaint and, on that basis, denies all such allegations.

17. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of the Complaint and, on that basis, denies all such allegations.

18. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 of the Complaint and, on that basis, denies all such allegations.

19. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 of the Complaint and, on that basis, denies all such allegations.

20. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20 of the Complaint and, on that basis, denies all such allegations.

21. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21 of the Complaint and, on that basis, denies all such allegations.

22. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 of the Complaint and, on that basis, denies all such allegations.

23. DAI admits that it has a place of business in Milford, Connecticut.

24. Because Plaintiff has agreed to dismiss Franchise World Headquarters, LLC from this case, Paragraph 24 of the Complaint does not require a response by DAI. To the extent that paragraph 24 is deemed to require a response, DAI admits that Franchise World Headquarters, LLC has a place of business in Milford, Connecticut. DAI acknowledges that the Complaint collectively refers to Doctor's Associates Inc. and Franchise World Headquarters, LLC as "Subway." The averments in this answer and counterclaims, however, are made by Doctor's Associates Inc. only.

25. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25 of the Complaint and, on that basis, denies all such allegations.

26. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26 of the Complaint and, on that basis, denies all such allegations.

27. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 of the Complaint and, on that basis, denies all such allegations.

28. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28 of the Complaint and, on that basis, denies all such allegations.

29. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29 of the Complaint and, on that basis, denies all such allegations.

30. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30 of the Complaint and, on that basis, denies all such allegations.

31. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31 of the Complaint and, on that basis, denies all such allegations.

32. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32 of the Complaint and, on that basis, denies all such allegations.

33. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33 of the Complaint and, on that basis, denies all such allegations.

34. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34 of the Complaint and, on that basis, denies all such allegations.

35. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35 of the Complaint and, on that basis, denies all such allegations.

36. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36 of the Complaint and, on that basis, denies all such allegations.

37. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37 of the Complaint and, on that basis, denies all such allegations.

38. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38 of the Complaint and, on that basis, denies all such allegations.

39. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39 of the Complaint and, on that basis, denies all such allegations.

40. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40 of the Complaint and, on that basis, denies all such allegations.

41. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41 of the Complaint and, on that basis, denies all such allegations.

42. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42 of the Complaint and, on that basis, denies all such allegations.

43. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43 of the Complaint and, on that basis, denies all such allegations.

44. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44 of the Complaint and, on that basis, denies all such allegations.

45. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45 of the Complaint and, on that basis, denies all such allegations.

46. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 46 of the Complaint and, on that basis, denies all such allegations.

47. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 47 of the Complaint and, on that basis, denies all such allegations.

48. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 48 of the Complaint and, on that basis, denies all such allegations.

49. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 49 of the Complaint and, on that basis, denies all such allegations.

50. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 50 of the Complaint and, on that basis, denies all such allegations.

### **JURISDICTION AND VENUE**

51. To the extent that the allegations in paragraph 51 of the Complaint are directed against DAI, DAI admits that the Complaint alleges an action for patent infringement pursuant to Title 35 of the United States Code. DAI further admits that this Court has subject matter jurisdiction over this action. DAI does not contest personal jurisdiction over DAI by this Court and further admits that DAI has conducted businesses within this Judicial District and/or the state of Texas. DAI denies that it has committed any acts of infringement in this Judicial District and further denies that its websites comprise “infringing methods and apparatuses.” DAI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 51 (including those alleged as to any other party) and, on that basis, denies all such allegations.

52. To the extent that the allegations in paragraph 52 of the Complaint are directed against DAI, DAI denies that venue is convenient in this Judicial District as to DAI but does not contest venue over DAI in this Judicial District. DAI does not contest personal jurisdiction over DAI by this Court and further admits that DAI has conducted businesses within this Judicial District and/or the state of Texas. DAI denies that it has committed any acts of infringement in this Judicial District and further denies that its websites comprise “infringing methods and

apparatuses.” DAI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 52 (including those alleged as to any other party) and, on that basis, denies all such allegations.

53. To the extent that the allegations in paragraph 53 of the Complaint are directed against DAI, DAI denies that venue is convenient in this Judicial District as to DAI but does not contest venue over DAI in this Judicial District. DAI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 53 (including those alleged as to any other party) and, on that basis, denies all such allegations.

### **COUNT I**

#### **[ALLEGED] INFRINGEMENT OF U.S. PATENT 5,930,474**

54. DAI admits that U.S. Patent No. 5,930,474 (“the ‘474 Patent”) is entitled “Internet Organizer for Accessing Geographically and Topically Based Information” and on its face indicates that it issued on July 29, 1999. DAI denies that the ‘474 Patent was duly and legally issued.

55. DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55 of the Complaint and, on that basis, denies all such allegations.

56. Because the claims of the ‘474 Patent have not yet been construed in this case, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56 of the Complaint and, on that basis, denies all such allegations.

57. To the extent that the allegations in paragraph 57 of the Complaint are directed against DAI, DAI denies the allegations of paragraph 57 of the Complaint. DAI has not and does not currently infringe any valid claim of the ‘474 Patent. DAI is without knowledge or

information sufficient to form a belief as to the truth of the remaining allegations of paragraph 57 (including those alleged as to any other party) and, on that basis, denies all such allegations.

58. Paragraph 58 of the Complaint does not require a response by DAI. To the extent that paragraph 58 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 58 of the Complaint and, on that basis, denies all such allegations.

59. Paragraph 59 of the Complaint does not require a response by DAI. To the extent that paragraph 59 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 59 of the Complaint and, on that basis, denies all such allegations.

60. Paragraph 60 of the Complaint does not require a response by DAI. To the extent that paragraph 60 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 60 of the Complaint and, on that basis, denies all such allegations.

61. Paragraph 61 of the Complaint does not require a response by DAI. To the extent that paragraph 61 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 61 of the Complaint and, on that basis, denies all such allegations.

62. Paragraph 62 of the Complaint does not require a response by DAI. To the extent that paragraph 62 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 62 of the Complaint and, on that basis, denies all such allegations.



63. Paragraph 63 of the Complaint does not require a response by DAI. To the extent that paragraph 63 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 63 of the Complaint and, on that basis, denies all such allegations.

64. Paragraph 64 of the Complaint does not require a response by DAI. To the extent that paragraph 64 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 64 of the Complaint and, on that basis, denies all such allegations.

65. Paragraph 65 of the Complaint does not require a response by DAI. To the extent that paragraph 65 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 65 of the Complaint and, on that basis, denies all such allegations.

66. Paragraph 66 of the Complaint does not require a response by DAI. To the extent that paragraph 66 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 66 of the Complaint and, on that basis, denies all such allegations.

67. Paragraph 67 of the Complaint does not require a response by DAI. To the extent that paragraph 67 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 67 of the Complaint and, on that basis, denies all such allegations.

68. Paragraph 68 of the Complaint does not require a response by DAI. To the extent that paragraph 68 is deemed to require a response, DAI is without knowledge or information

sufficient to form a belief as to the truth of the allegations of paragraph 68 of the Complaint and, on that basis, denies all such allegations.

69. Paragraph 69 of the Complaint does not require a response by DAI. To the extent that paragraph 69 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 69 of the Complaint and, on that basis, denies all such allegations.

70. Paragraph 70 of the Complaint does not require a response by DAI. To the extent that paragraph 70 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 70 of the Complaint and, on that basis, denies all such allegations.

71. Paragraph 71 of the Complaint does not require a response by DAI. To the extent that paragraph 71 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 71 of the Complaint and, on that basis, denies all such allegations.

72. DAI denies the allegations of paragraph 72 of the Complaint.

73. Paragraph 73 of the Complaint does not require a response by DAI. To the extent that paragraph 73 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 73 of the Complaint and, on that basis, denies all such allegations.

74. Paragraph 74 of the Complaint does not require a response by DAI. To the extent that paragraph 74 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 74 of the Complaint and, on that basis, denies all such allegations.

75. Paragraph 75 of the Complaint does not require a response by DAI. To the extent that paragraph 75 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 75 of the Complaint and, on that basis, denies all such allegations.

76. Paragraph 76 of the Complaint does not require a response by DAI. To the extent that paragraph 76 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 76 of the Complaint and, on that basis, denies all such allegations.

77. Paragraph 77 of the Complaint does not require a response by DAI. To the extent that paragraph 77 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 77 of the Complaint and, on that basis, denies all such allegations.

78. Paragraph 78 of the Complaint does not require a response by DAI. To the extent that paragraph 78 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 78 of the Complaint and, on that basis, denies all such allegations.

79. Paragraph 79 of the Complaint does not require a response by DAI. To the extent that paragraph 79 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 79 of the Complaint and, on that basis, denies all such allegations.

80. Paragraph 80 of the Complaint does not require a response by DAI. To the extent that paragraph 80 is deemed to require a response, DAI is without knowledge or information

sufficient to form a belief as to the truth of the allegations of paragraph 80 of the Complaint and, on that basis, denies all such allegations.

81. Paragraph 81 of the Complaint does not require a response by DAI. To the extent that paragraph 81 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 81 of the Complaint and, on that basis, denies all such allegations.

82. Paragraph 82 of the Complaint does not require a response by DAI. To the extent that paragraph 82 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 82 of the Complaint and, on that basis, denies all such allegations.

83. Paragraph 83 of the Complaint does not require a response by DAI. To the extent that paragraph 83 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 83 of the Complaint and, on that basis, denies all such allegations.

84. Paragraph 84 of the Complaint does not require a response by DAI. To the extent that paragraph 84 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 84 of the Complaint and, on that basis, denies all such allegations.

85. Paragraph 85 of the Complaint does not require a response by DAI. To the extent that paragraph 85 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 85 of the Complaint and, on that basis, denies all such allegations.

86. Paragraph 86 of the Complaint does not require a response by DAI. To the extent that paragraph 86 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 86 of the Complaint and, on that basis, denies all such allegations.

87. Paragraph 87 of the Complaint does not require a response by DAI. To the extent that paragraph 87 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 87 of the Complaint and, on that basis, denies all such allegations.

88. Paragraph 88 of the Complaint does not require a response by DAI. To the extent that paragraph 88 is deemed to require a response, DAI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 88 of the Complaint and, on that basis, denies all such allegations.

89. Paragraph 89 of the Complaint fails to state a claim for willful infringement on which relief may be granted. To the extent that paragraph 89 is deemed to require a response and to the extent that the allegations in paragraph 89 of the Complaint are directed against DAI, DAI denies the allegations of paragraph 89 of the Complaint. DAI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 89 (including those alleged as to any other party) and, on that basis, denies all such allegations.

90. To the extent that the allegations in paragraph 90 of the Complaint are directed against DAI, DAI denies the allegations of paragraph 90 of the Complaint. DAI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 90 (including those alleged as to any other party) and, on that basis, denies all such allegations.

**PRAYER FOR [ALLEGED] RELIEF**

91. DAI denies that Plaintiff is entitled to any relief from DAI and denies all of the allegations directed towards DAI contained in paragraphs “1.” through “6.” of Plaintiff’s Prayer for Relief. To the extent that the allegations in paragraphs “1.” through “6.” of Plaintiff’s Prayer for Relief are directed against defendants other than DAI, DAI is without knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies all such allegations.

**DEMAND FOR JURY TRIAL**

92. DAI admits that the Complaint sets forth a request for trial by jury.

93. To the extent that any allegations of the Complaint have not been previously specifically admitted or denied, DAI denies them.

**AFFIRMATIVE DEFENSES**

DAI's Affirmative Defenses are listed below. DAI reserves the right to amend its Answer to add additional Affirmative Defenses, including allegations of inequitable conduct, consistent with the facts discovered in the case.

**FIRST DEFENSE**

1. DAI does not and has not infringed, under any theory of infringement (including directly (whether individually or jointly) or indirectly (whether contributorily or by inducement)), any valid, enforceable claim of the '474 Patent.

**SECOND DEFENSE**

2. Each asserted claim of the '474 Patent is invalid for failure to comply with one or more of the requirements of United States Code, Title 35, including without limitation, 35 U.S.C. §§ 101, 102, 103, and 112, and the rules, regulations, and laws pertaining thereto.

**THIRD DEFENSE**

3. Plaintiff's claims are barred in whole or in part based on prosecution history estoppel and/or prosecution history disclaimer.

**FOURTH DEFENSE**

4. To the extent that Plaintiff and alleged predecessors in interest to the '474 Patent failed to properly mark any of their relevant products as required by 35 U.S.C. § 287 or otherwise give proper notice that DAI's actions allegedly infringed the '474 Patent, DAI is not liable to Plaintiff for the acts alleged to have been performed before it received actual notice that it was allegedly infringing the '474 Patent.

**FIFTH DEFENSE**

5. To the extent that Plaintiff asserts that DAI indirectly infringes, either by contributory infringement or inducement of infringement, DAI is not liable to Plaintiff for the acts alleged to have been performed before DAI knew that its actions would cause indirect infringement.

**SIXTH DEFENSE**

6. Plaintiff's attempted enforcement of the '474 Patent against DAI is barred by laches and estoppel.

**SEVENTH DEFENSE**

7. The claims of the '474 Patent are not entitled to a scope sufficient to encompass any system employed or process practiced by DAI.

**EIGHTH DEFENSE**

8. The Complaint fails to state a claim upon which relief can be granted.



**COUNTERCLAIMS**

**PARTIES**

1. Counterclaim Plaintiff Doctor's Associates Inc. d/b/a SUBWAY<sup>®</sup> ("DAI") is a Florida corporation, with its principal place of business in Milford, Connecticut.

2. On information and belief based solely on Paragraph 1 of the Complaint as pled by Plaintiff, Counterclaim Defendant GeoTag, Inc. is a Delaware Corporation, with its principal place of business located in Plano, Texas.

**JURISDICTION**

3. This counterclaim arises under the patent laws of the United States, Title 35, United States Code. The jurisdiction of this Court is proper under at least 35 U.S.C. § 271 *et seq.*, and 28 U.S.C. §§ 1331, 1338, 1367, and 2201-02.

4. Venue is proper in this District pursuant to at least 28 U.S.C. §§ 1391 and 1400. Venue is further proper in the Marshall Division.

**COUNT I**

**DECLARATION REGARDING NON-INFRINGEMENT**

5. Based on Plaintiff's filing of this action and DAI's First Defense, an actual controversy has arisen and now exists between the parties as to whether DAI infringes the '474 Patent.

6. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.*, DAI requests a declaration by the Court that it does not infringe any claim of the '474 Patent under any theory (including directly (whether individually or jointly) or indirectly (whether contributorily or by inducement)).

**COUNT II**

**DECLARATION REGARDING INVALIDITY**

7. Based on Plaintiff's filing of this action and DAI's Second Defense, an actual controversy has arisen and now exists between the parties as to the validity of the claims of the '474 Patent.

8. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.*, and 35 U.S.C. § 100 *et seq.*, DAI requests a declaration by the Court that the claims of the '474 Patent are invalid.

**PRAYER FOR RELIEF**

WHEREFORE, DAI asks this Court to enter judgment in DAI favor and against Plaintiff GeoTag by granting the following relief:

- a) a declaration that the asserted claims of the '474 Patent are invalid;
- b) a declaration that DAI does not infringe, under any theory, any valid claim of the '474 Patent that may be enforceable;
- c) a declaration that GeoTag take nothing by its Complaint;
- d) judgment against GeoTag and in favor of DAI;
- e) dismissal of the Complaint with prejudice;
- f) an award to DAI of its costs and attorneys' fees incurred in this action; and
- g) further relief as the Court may deem just and proper.

**JURY DEMAND**

DAI hereby demands trial by jury on all issues.

Dated: March 14, 2011

Respectfully submitted,

**FISH & RICHARDSON P.C.**

*/s/ Neil J. McNabney*

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**ATTORNEYS FOR DEFENDANT  
DOCTOR'S ASSOCIATES INC.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on March 14, 2011, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

*/s/Neil J. McNabney*

Neil J. McNabney