

Plaintiffs: Ting Choon Meng: 4th:

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No. 619 of 2011/R

Between

**MOBILESTATS TECHNOLOGIES PTE. LTD.
(RC No. 200400001D)**

...Plaintiffs

And

**ATTORNEY-GENERAL
(ID No. UNKNOWN)**

...Defendants

AFFIDAVIT OF EVIDENCE-IN-CHIEF

I, Ting Choon Meng

, of

do solemnly and sincerely affirm and say as follows:

- 1 I am a director of the Plaintiffs. The matters deposed to herein are known to me personally and they are true.
- 2 There is now produced and shown to me marked as a bundle "**TCM-5**" a set of documents which I will be referring to in this affidavit.

Singapore Patent Application No. 200207824-4 and Certificate of Grant of Patent (P-No. 113446)

3 Dr. Mak Koon Hou ("Dr. Mak"), another director of the Plaintiffs, and I, are the inventors of "A Mobile First Aid Post." The object of a Mobile First Aid Post is to provide a First Aid Post in medical emergencies, and in particular in disaster and combat situations, which is quick and simple to become operative at an emergency site. We had thought of inventing "A Mobile First Aid Post" after the 11 September 2001 terrorist attacks in the United States of America. We felt that emergency procedures could be improved so that healthcare providers could be ready to treat people almost immediately when such emergencies happen. The key issue in managing mass casualty situations is the need for rapid deployment and easy availability of life-saving equipment, and "A Mobile First Aid Post" was designed to meet these needs. I refer to a Youtube video at **Tab 1** of "TCM-5" titled "Dr Ting Choon Meng Profile Video for FOI 2009" where "A Mobile First Aid Post" is featured at 01:21. This video was taken from a Channel 8 documentary programme featuring the FOI. "FOI" stands for Fellowship of Inventors.

4 On 27 December 2002, Dr. Mak and I filed Singapore Patent Application No. 200207824-4 (the "Singapore Patent Application") for "A Mobile First Aid Post." I refer to the Register entry for SG Publication No. 113446 at **Tab 2** of "TCM-5."

- 5 On 14 December 2004, the Intellectual Property Office of Singapore ("IPOS") forwarded an "Invitation to Respond to Written Opinion" requiring us to respond to certain observations that claims 10-12 and 18 of the Singapore Patent Application lacked an inventive step in relation to US 2002/0149220 A1. This was based on a Search Report and Written Opinion by the Danish Patent & Trademark Office. I refer to the Invitation to Respond to Written Opinion from IPOS to Dr Mak and me dated 14 December 2004 at **Tab 3** of "TCM-5."
- 6 On 6 May 2005, Dr. Mak and I filed a "Response to Written Opinion" and this was forwarded by IPOS to the Danish Patent & Trademark Office on 25 May 2005. I refer to the Response to Written Opinion from IPOS dated 25 May 2005 at **Tab 4** of "TCM-5."
- 7 On 6 July 2005, IPOS forwarded another Search and Examination Report by the Danish Patent & Trademark Office which now stated that claims 1-24 were novel, contained an inventive step, and were capable of industrial application. It also stated that "[t]he claimed invention is patentable according to section 13(2) of SG Patents Act." I refer to the Search and Examination report from IPOS to Dr Mak and me dated 6 July 2005 at **Tab 5** of "TCM-5."
- 8 The abstract of the Singapore Patent Application was published on 29 August 2005. I refer to the Register entry for SG Publication No. 113446 at **Tab 2** of "TCM-5."

- 9 On 21 September 2005, Dr. Mak and I received the Certificate of Grant of Patent for the Singapore Patent Application. Dr. Mak and I became the registered proprietors of Singapore Patent No. 113446 (the "Patent"). I refer to the Notification of Grant from the IPOS and the Certificate of Grant of Patent (P-No. 113446) with the annexed specification of the subject patent at Tab 6 of "TCM-5." Details of the patent grant were published on 28 October 2005.
- 10 Dr. Mak and I later assigned the Patent to the Plaintiffs and the assignment was recorded with the IPOS on 8 August 2011. I refer to the Register entry for SG Publication No. 113446 at Tab 2 of "TCM-5."

The corresponding Patent Cooperation Treaty Application No. PCT/SG2003/000292 and other patent applications

- 11 The corresponding Patent Cooperation Treaty Application No. PCT/SG2003/000292 was filed on 24 December 2003 claiming priority from the Singapore Patent Application (the "PCT Application"). I refer to the International Search Report dated 19 February 2004 at Tab 7 of "TCM-5." It cites documents which were considered to be relevant to the PCT Application. Notwithstanding the cited relevant documents, on 13 August 2004, the Patent Cooperation Treaty International Preliminary Examination Report stated that claims 1-24 of our PCT Application met the criteria set out in PCT Article 3(2) – (4). Claims 1-24 were considered to be novel, not lacking in inventive step and capable of industrial

application. I refer to the Patent Cooperation Treaty International Preliminary Examination Report dated 13 August 2004 at **Tab 8** of "TCM-5."

- 12 The PCT Application was subsequently published on 15 July 2004 as PCT Publication No. WO 2004/058128 A1. I refer to the International Application Published Under the Patent Cooperation Treaty dated 15 July 2004 at **Tab 37** of "TCM-5."
- 13 Dr. Mak and I (or the Plaintiffs, as the case may be) have also successfully applied for patents for "A Mobile First Aid Post" in Australia, Japan, Israel, Taiwan, Malaysia, Hong Kong, the United States of America and Europe. I refer to the following documents at **Tab 9** of "TCM-5":-
 - (a) Australia Patent No. 2003300769 dated 20 March 2008;
 - (b) Japan Patent No. 3962747 dated 25 May 2007;
 - (c) English translation of the bibliographic details and claims of Japanese Patent No. 3962747 provided by our Japanese patent agents;
 - (d) Israel Patent No. 169409 dated 1 December 2011;
 - (e) Taiwan Patent No 1258365 dated 21 July 2006 with an English translation of the bibliographic details provided by our Taiwanese patent agents;
 - (f) Malaysia Patent No. MY-136220-A dated 29 August 2008;
 - (g) Hong Kong Patent No. HK1106997 dated 16 December 2011;
 - (h) United States Patent No. 7,360,813 B2 dated 22 April 2008; and
 - (i) European Patent No. EP 1 628 617 B1 dated 11 May 2011.

14 Our applications in Thailand and the United Arab Emirates are pending. I refer to the following documents at **Tab 36 of "TCM-5"**:-

- (a) Thailand Patent Application No. 0301004960 (formerly known as Patent Application No. 087708) dated 26 December 2003;
- (b) English translation of the filing particulars of Thailand Application No. 087708 provided by our Thai patent agents dated 26 December 2003;
- (c) United Arab Emirates Patent Application No. 351/2005 dated 24 December 2003; and
- (d) English translation of the filing particulars of United Arab Emirates Patent Application No. 351/2005 dated 27 June 2005 provided by our United Arab Emirates patent agent.

The European Patent application

15 On 17 January 2006, the European Patent Office ("EPO") issued a communication pursuant to Rules 109 and 110 of the European Patent Convention ("EPC"). I refer to **Tab 30 of "TCM-5."** In the communication, the EPO gave notice to Dr. Mak and I, as the applicants, that the claims or other application documents could be amended within a non-extendable time limit of one month after notification of the aforementioned communication.

- 16 On 27 January 2006, our patent agent in Europe responded to the communication by requesting the EPO to replace the originally filed 24 claims with amended claims 1 to 9. Amended claims 1 to 9 were identical to claims 1 to 9 of the original filed claims. I refer to the letter dated 27 January 2006 from A.A. Thornton & Co. to the EPO regarding European Patent Application No. 03814000.0 based on PCT/SG03/00292 at Tab 31 of "TCM-5." The letter further reiterated that the claim amendments did not mean that we had abandoned any of the subject matter as originally filed. We had amended the claims to comply with the patent laws applied by the EPO which do not allow more than one independent claim in the claim set. Since claims 1, 10 and 20 of the claims originally filed with the EPO were independent claims, we deleted independent claims 10 and 24 and their dependent claims 11-29 and 21-24 to comply with the patent laws applied by the EPO.
- 17 On 6 August 2009, the EPO issued a supplementary European search report. I refer to the communication regarding the transmission of the supplementary European search report from the EPO to A.A. Thornton & Co regarding European Patent Application No. 03814000.0 at Tab 32 of "TCM-5." The communication raised the objection that the European patent application lacked unity of invention, and that there were three separate inventions in the patent application characterised by claims 1-9, claims 10-19 and claims 10-24.

- 18 On 6 September 2010, the EPO issued a communication pursuant to Rule 71(3) of the EPC informing us of the EPO's intention to grant a European patent on the basis of amended claims 1-9, and the description and drawings as originally filed. I refer to the communication under rule 71(3) of the EPC dated 6 September 2010 from the EPO to A.A. Thornton & Co regarding European Patent Application No. 03814000.0 at **Tab 38** of "TCM-5."
- 19 On 13 January 2011, we responded to the communication by submitting claim amendments wherein new claims 10 to 23 were introduced. New claims 10 to 23 were based on claims 10 to 24 as originally filed: New claims 10 to 18 were based on claims 10 to 18 as originally filed, claim 19 of the claims as originally filed was deleted, and new claims 19 to 23 were based on claims 20 to 24 as originally filed. New claims 10 to 23 were made dependent on claim 1. I refer to the amended claims filed by A.A. Thornton & Co on our behalf with the EPO dated 13 January 2011 at **Tab 39** of "TCM-5."
- 20 As new claims 10 to 23 were made dependent on claim 1, the unity of invention objection raised in the supplementary European search report was therefore overcome. As such, European patent no. EP 1 628 617 B1 was subsequently issued containing amended claims 1 to 23. I refer to the Decision to grant a European patent pursuant to Article 97(1) EPC dated 14 April 2011 at **Tab 40** of "TCM-5", the European patent no. EP 1 628 617 B1 dated 11 May 2011 at **Tab 9** of "TCM-5" and the communication regarding the expiry of the time limit within

which notice of opposition may be filed dated 16 March 2012 at **Tab 41** of "TCM-5."

The United States of America ("U.S") patent application

- 21 On 21 May 2007, the United States Patent and Trademark Office (the "USPTO") Examiner issued an Office Action for the corresponding U.S. patent application No. 10/540,905 filed by Dr. Mak and I. I refer to the Office communication from the USPTO to Wells St. John P.S. at **Tab 33** of "TCM-5." In the Office Action, one of the objections raised by the Examiner in paragraph 6 and 7 of the Office Action was that claims 10-14, 17 and 18 lacked novelty and were anticipated by prior art, namely U.S. Patent No. 6,223,479 at **Tab 34** of "TCM-5."
- 22 The EPO examiner had not shared that view. In the supplementary European search report referred to at paragraph 17 above, the EPO Examiner had taken the view that prior art document US 6,223,479 merely provided technical background and was not relevant for purposes of determining novelty or inventive step. The USPTO Examiner's view was also not shared by the Examiners for our corresponding patent applications in Singapore, the PCT application, Australia, Japan, Israel, Taiwan and Malaysia. I refer to the following documents:-
- (a) The final search and examination report issued by the Examiner for the Singapore Patent Application at **Tab 5** of "TCM-5."
 - (b) The search and examination reports issued by the Examiner for the PCT Application at **Tab 7** and **Tab 8** of "TCM-5."

- (c) The Notice of Acceptance issued by IP Australia dated 21 November 2007 at Tab 42 of "TCM-5." It states that the Examiner had no objections to our application. On the second page, under "Prior Art Documents," U.S. Patent No. 6,223,479 was not cited.
- (d) Letter from Yuasa and Hara dated 27 April 2007 to M/s Yu Sam Audrey & Partners with enclosed Notice of Allowance from the Japanese Patent Office at Tab 45 of "TCM-5." The letter from Yuasa and Hara states that a "*favorable decision*" had been reached with respect to our Japanese patent application, and did not cite or mention U.S. Patent No. 6,223,479.
- (e) The Notice of Deficiencies in Patent Application No. 169409 from the Commissioner of Patents of the Patent Office of Israel dated 28 February 2010 and our Memorandum in Response to the Official Action dated February 28, 2010 issued by JMB, Factor & Co. on our behalf at Tab 43 of "TCM-5." The Notice of Deficiencies did not cite or mention U.S. Patent No. 6,223,479.
- (f) The Notice of Allowance from the Taiwan Patent Office and English translation thereof provided by our Taiwanese patent agents dated 16 March 2006 at Tab 46 of "TCM-5." The Taiwan Patent Office allowed our patent application, and U.S. Patent No. 6,223,479 was not cited or mentioned.
- (g) The search report by the Intellectual Property Corporation of Malaysia dated 28 May 2007 forwarded to us on 29 June 2007 at Tab 44 of "TCM-5." The Intellectual Property Corporation of Malaysia adopts the search

report of our PCT Application where U.S. Patent No. 6,223,479 was not cited.

23 In any event, the USPTO Examiner did not reject claims 15 and 16 of our U.S. Patent Application and was of the view that they were patentable. I refer to paragraph 9 of the Office communication from the USPTO to Wells St. John P.S. at Tab 33 of "TCM-5."

24 Our U.S. patent agents advised us that to expedite the grant of the corresponding U.S. patent, claim 19 should be deleted and claim 10 should be modified to include the features of claim 19. Thus, claim 10 was amended to include the following words: "*wherein one or more of said at least one panel includes means for supply of medical utilities selected from one or more of compressed air, suction, water, and oxygen which are accessible by a user for the treatment of patients from a downwardly facing major surface of the one or more of said at least one panel when in said erected condition...*" This feature had not been disclosed in U.S. Patent No. 6,223,479. We agreed to do as the patent agents advised. I refer to our Response to May 21, 2007 Office Action dated 25 September 2007 at Tab 35 of "TCM-5."

- 25 The corresponding U.S. patent was granted and issued as U.S. Patent No. 7,360,813 B2 dated 22 April 2008 based on the claim amendments filed in our Response to May 21, 2007 Office Action. I refer to U.S. Patent No. 7,360,813 B2 at Tab 9 of "TCM-5."

The arrangement between the Singapore Civil Defence Force (the "SCDF") and the Plaintiffs for the use of "A Mobile First Aid Post"

- 26 We presented "A Mobile First Aid Post" by way of a Powerpoint presentation to the SCDF Commissioner Mr. James Tan some time in 2004. SCDF told us that if we could build a prototype of "A Mobile First Aid Post," the SCDF would put it on trial for six (6) months and use it during their training exercises. We built a prototype of "A Mobile First Aid Post" and it was put on trial. At the end of the trial, SCDF was satisfied with its performance and called for a tender in 2006 for vendors to manufacture such vehicles.
- 27 As such, in addition to the first prototype that was made in 2004, in 2006, four more such vehicles were made. In 2008, SCDF called for another tender for the manufacture of these vehicles, and four more such vehicles were made.
- 28 In the SCDF tender documents provided to potential tenderers, it was a condition of the tender that all potential tenderers had to have a licensing agreement with Dr. Mak and I to *make* the vehicles. Tenders from vendors which had not signed a licensing agreement with us would not even be considered by the SCDF. I refer to

an example of such a Tender for Supply, Design and Delivery of Two Units (2) of Station with Immediate First-Aid Treatment (SWIFT) For Singapore Civil Defence Force at Tab 47 of "TCM-5." At page 5-1, the tender document states that *"Please be informed that the interested bidder shall have to complete a licensing agreement with Mobilestats (MS) before they can proceed [sic] This is because the Singapore patent is still in force by MS."*

29 Under licensing agreements which the Plaintiffs entered into with potential tenderers in 2006, the licence fee the potential tenderers agreed to pay the Plaintiffs if they were successful was \$30,000 per vehicle. I refer to clause 3.1 of an example of such a Licence Agreement between the Plaintiffs and one of the vendors, Gee Sheng Machinery & Engineering Pte Ltd dated 13 February 2006 at Tab 48 of "TCM-5."

30 In later licensing agreements which the Plaintiffs entered into with potential tenderers, the licence fee the potential tenderers agreed to pay the Plaintiffs if they were successful was calculated at ten percent (10%) of the tender price, or \$30,000 per vehicle, whichever was higher. I refer to clause 6.1 of an example of such a Licence Agreement between the Plaintiffs and one of the vendors, Gee Sheng Machinery & Engineering Pte Ltd dated 26 February 2010 at Tab 49 of "TCM-5."

31 SCDF asked Dr. Mak and I to waive the licensing fee for SCDF's *use* of the vehicles in Singapore. Dr. Mak and I agreed.

32 Dr. Mak coined the acronym SWIFT for our invention. SWIFT stands for Station with Immediate First-Aid Treatment. The acronym was intended to capture the essence of our invention. SCDF adopted our name.

33 After the trial of the prototype, the standard operating procedure of SCDF in mass casualty situations was completely restructured around how the SWIFT vehicles would be used and deployed. All subsequent trainees were trained in the new standard operating procedure which was based on the use and deployment of the SWIFT vehicles.

The SWIFT vehicle was regarded as an innovation at its inception and continues to be classified that way

34 In February 2004, an article titled "SWIFT (Station with Immediate First-Aid Treatment)" was published in the International Fire Fighter Magazine Issue 1. I refer to **Tab 10** of "TCM-5." It states "*several major manufacturers worldwide [had] expressed interest in promoting the concept, with particular interest being shown by the Homeland Defence team in the USA.*" It was also reported that at that time in 2004, whenever the medical platoon was activated, 10-12 men were needed to unload tents and medical stores to set up a First Aid Point (FAP), and it took approximately 20 minutes to complete the set up. "*Precious time*" was lost at

the setup of the FAP for the medical platoon to attend to the first wave casualties. However, SWIFT was designed to overcome operational problems encountered by the medical platoon. The setup is done by two men and requires five minutes. It was said to be able to provide "*better medical treatment*" for the casualties. The article further states that "*The SWIFT could also be used by the military medical support for its troops. The ease and swiftness of deployment and redeployment of the SWIFT increase the mobility of the vehicle, appropriate for military purposes.*"

- 35 On 7 September 2004, the Straits Times published an article titled "Mini hospital on wheels all set to roll." I refer to Tab 11 of "TCM-5." SWIFT was said to have worked so well during tests that one vehicle was on stand-by at the SCDF and the SCDF had requisitioned four more. The head of the SCDF's medical vocation branch, Captain Ithnin Ahmid, was quoted to have said that the time to set up shop may be critical to the first wave of casualties, particularly during the first five minutes, which may mean life or death for some. This was also the time when sheer numbers tended to overwhelm the resources available. The article further stated that Conventional First Aid Points set up at such scenes, which comprise tents and medical equipment, took about 20 minutes to be set up by 20 people. However, SWIFT could be set up by two people in just under five minutes. Captain Ahmid said that Swift allowed medical personnel to "*immediately stabilise severe casualties, prioritise treatment for victims and send them to the right place for treatments.*"

36 In the keynote address by the then-Minister for Home Affairs and Deputy Prime Minister, Mr. Wong Kan Seng at the SCDF Workplan Seminar on 15 April 2005 at The Civil Defence Academy, the SCDF again classified the SWIFT vehicle as one of the various "*innovations*" of SCDF. I refer to **Tab 12** of "TCM-5."

37 The SCDF continues to regard the SWIFT vehicle as an "*innovation*." I refer to the following at **Tab 13** of "TCM-5":-

- (a) Extract from the SCDF website titled "GENERAL Appliances & Innovation";
- (b) Extract from the SCDF website titled "GENERAL Innovations"; and
- (c) Article titled "Embracing a culture of innovation" in the "Home Team Report" dated 25 December 2010.

I also refer to the video of the SWIFT vehicle at **Tab 1** of "TCM-5," taken from the website from which paragraph 37 (a) above is from.

38 The Plaintiffs have also successfully licensed the SWIFT vehicles outside Singapore. On 18 December 2008, the Plaintiffs entered into a License Agreement for the Marketing, Sales and Distribution of "SWIFT", Station with Immediate First Aid Treatment, Mobile Medical Vehicle in China with Beijing Jian Jiang Fire Technology Company Limited. I refer to the License Agreement at **Tab 50** of "TCM-5."

Interactions with the Singapore Armed Forces

39 Some time in 2004, Dr. Mak spoke with BG (Dr.) Wong Yue Sie ("BG (Dr.) Wong"), the then-Chief of the Singapore Armed Forces (the "SAF") Medical Corps. Dr. Mak will depose to this in his Affidavit of Evidence-in-Chief.

40 The SWIFT was later displayed at the Singapore Expo Hall 2 at the International Healthcare Facilities Exhibition & Conference 2005 from 31 August 2005 to 2 September 2005. BG (Dr.) Wong came to the exhibition. BG (Dr.) Wong expressed interest in the SWIFT vehicle and said that it was useful. He told me that changes would have to be made to the vehicle if it were to be adapted for the SAF's use. For example, the vehicle would have to be painted to camouflage it, and it needed to be "ruggedised." I told him that such changes would not be a problem, but I informed him the vehicle was patented. He told me that he would contact SCDF and said to me that "maybe we can do it on our own" or words to that effect. I remember that clearly because I remember telling him that he could not do that because the vehicle was patented.

41 The Plaintiffs did not hear from MINDEF or the SAF thereafter.

Other exhibitions at which SWIFT was displayed

42 On 14 May 2004, at the SCDF Workplan Seminar 2004 held at the Civil Defence Academy, the SCDF displayed the SWIFT. This was reported in the June 2004

edition of SCDF's Rescue 995 Magazine in an article titled "SCDF's Innovations @ Work" in "Rescue 995" Volume 1, Number 35 at Tab 14 of "TCM-5."

43 The SWIFT was subsequently displayed in February 2005 at the Fire & Emergency Services Asia (FESA) 2005 Conference-cum-Exhibition at the Suntec Singapore International Convention and Exhibition Centre. I refer to the speech on 22 February 2005 by Associate Professor Ho Peng Kee, the Senior Minister of State for Law and Home Affairs at that time, at the Opening Ceremony of the Fire & Emergency Services Asia (FESA) 2005 Conference-cum-Exhibition at the Suntec Singapore International Convention and Exhibition Centre at Tab 15 of "TCM-5".

44 From 6 August 2005 to 14 August 2005, SWIFT was displayed at the Carnival @ Marina National Day Celebrations. This was reported in an article titled "Celebrating Singapore's 40th Birthday" in "Rescue 995" Volume 2, Number 7 at Tab 16 of "TCM-5."

45 In April 2009, at a visit by the Myanmar Prime Minister to SCDF, the SWIFT vehicle was exhibited in a static display. I refer to the article titled "Myanmar Prime Minister Visits SCDF" in "Rescue 995" Volume 4, Number 5 at Tab 17 of "TCM-5."

Manufacture, purchase and use and display of "A Mobile First Aid Post" by SAF

46 MINDEF later went ahead to procure the making of vehicles that infringe the Patent.

47 The Defence Science and Technology Agency ("DSTA") was aware of the Plaintiffs' patent from 22 April 2009 onwards. On or about 22 April 2009, the Plaintiffs came to learn of Invitation to Tender No. 7109100114. The Plaintiffs thought that this was an invitation to tender to manufacture vehicles which would infringe the Plaintiffs' patent. On 22 April 2009, the Plaintiffs wrote to DSTA and notified DSTA of the Plaintiffs' patent over "A Mobile First Aid Post." DSTA replied on 25 May 2009 and stated that as the winning tender has not been determined, the exact design or solution had not been established but added that if the successful tenderer used third-party intellectual property in the performance of its obligations, the onus was on the successful tenderer to "*carry out the necessary actions to ensure*" that there was no breach of any legal obligation. I refer to the following at Tab 18 of "TCM-5":-

- (a) Email from the Plaintiffs to DSTA dated 22 April 2009; and
- (b) Letter from DSTA to the Plaintiffs dated 25 May 2009.

48 The Plaintiffs were later told, by MINDEF's letter dated 4 August 2011 referred to at paragraph 54 below, that the invitation to tender (to manufacture vehicles which the Plaintiffs said would infringe the Plaintiffs' patent) was Invitation to Tender No. 7108105610 and not Invitation to Tender No. 7109100114. However,

the point is the Defendants were aware of the Plaintiffs' patent from as early as 22 April 2009.

49 The Defendants have used vehicles which infringe the Plaintiffs' patent at least since 10 July 2009. I refer to the article titled "3G Army Medical Support System to give SAF edge on battlefield" extracted from the Channel News Asia website dated 10 July 2009 at **Tab 19** of "TCM-5."

50 The Defendants had plans to use and display the vehicles during the National Day Parade ("NDP") in 2010 and 2011. I refer to the following at **Tab 20** of "TCM-5":-

- (a) Extract from NDP 2010 website on "3rd Gen Battalion Casualty Station" dated 25 July 2011;
- (b) Article from MINDEF website titled "Making NDP 2011 tick" dated 23 July 2011;
- (c) Article titled "NDP organisers harness technology to improve safety" extracted from the Channel News Asia website dated 24 July 2011;
- (d) Newspaper article titled "Safety gets a boost for NDP 2011" in The Sunday Times dated 24 July 2011; and
- (e) Newspaper article in Lian He Zao Bao and English translation thereof dated 24 July 2011.

51 I also refer to the Youtube video titled "NDP organisers harness technology to
improve safety" at Tab 1 of "TCM-5."

52 From the documents, it appears that the infringing vehicles have been used since
2009 and were exhibited in NDP 2010. We did not know that the infringing
vehicles have been used since 2009, or that they were exhibited in NDP 2010.
Had we known, we would have objected to those uses and/or exhibitions of the
infringing vehicles.

53 By a letter dated 29 July 2011, the Plaintiffs' solicitors, M/s Yusarn Audrey (then
known as Yu Sarn Audrey & Partners) sent MINDEF a letter notifying MINDEF
of the Plaintiffs' patent and annexing articles published on the newspapers and
internet. The Defendants were notified that features of the infringing vehicles fell
within the claims of the Plaintiffs' patent, and the Plaintiffs requested that the
Defendants cease all use of the infringing vehicles. I refer to the letter at Tab 21
of "TCM-5."

54 By a letter dated 4 August 2011, MINDEF stated that the vehicles were supplied
to MINDEF by Syntech Engineers Pte Ltd ("Syntech") by a contract awarded to
Syntech pursuant to Invitation to Tender No. 7108105610. The letter further
stated that Syntech was obliged to obtain the licence to use third party intellectual
property in relation to the equipment, and that M/s Yu Sarn Audrey & Partners'
letter would be forwarded to Syntech. MINDEF also drew the Plaintiffs' attention

to Part XII of the Patents Act. I refer to the letter at **Tab 22** of "TCM-5" and the tender invitation number 7108105610 at **Tab 23** of "TCM-5."

55 An "Annex B to U96J/16-2-11-30 dated 4 Aug 11" was attached to the letter dated 4 August 2011. This was a letter dated 13 May 2009 from Syntech to DSTA. From the letter, it seems DSTA had been aware since on or about 13 May 2009 that vehicles manufactured by Syntech on MINDEF's behalf pursuant to Invitation to Tender 7108105610 might infringe the Plaintiffs' patent. In that letter, Syntech noted that DSTA had raised concerns that the medical shelter Syntech was manufacturing pursuant to Invitation to Tender 7108105610, infringed the Plaintiffs' patent. I refer to the letter from Syntech to DSTA dated 13 May 2009 at **Tab 24** of "TCM-5."

56 In fact, at the time the Defendants made the contract with Syntech for the "Provision of Medical Shelter" on 19 June 2009, the Defendants already knew there was a possibility that the vehicles manufactured by Syntech might infringe intellectual property rights. The Defendants imposed on Syntech the obligation to obtain the necessary licences to allow the Defendants to use the intellectual property. I refer to clause 38, 39 and 40 of Contract No. 9009500086 between the Government of the Republic of Singapore and Syntech for "Provision of Medical Shelter" at **Tab 25** of "TCM-5."

57 The relevant parts of the clauses state:

"38 INTELLECTUAL PROPERTY IN GENERAL

38.1 Except as otherwise expressly provided in this Contract, the Contractor warrants that it has obtained or will in due time obtain all rights, relating to the use of any Intellectual Property, which may be required for the purpose of this Contract without requiring any assistance from the Authority. The Authority shall not be obliged to enter into any further agreement with the Contractor or any third party in respect of the use of such Intellectual Property.

...

39.4 ...In relation to Third Party IP, the Contractor shall obtain for the Authority, without charge to the Authority, a royalty free, irrevocable, worldwide, perpetual, non exclusive, licence to use all Third Party IP solely for, or in relation to the Articles and to use, modify and reproduce the Foreground and Background IP which is not incorporated into commercial off the shelf equipment.

...

40 INDEMNITY FOR INTELLECTUAL PROPERTY INFRINGEMENT

...

40.2 The Contractor shall indemnify the Authority (including for this purpose, every officer and department thereof) against all loss, damage or expense arising in respect of any action or claim for actual or alleged infringement

of any Intellectual Property rights by the use or possession of the Articles and Documentation...

40.3 ...

40.4 *In the event of any claims being made against the Authority in respect of matters to which the indemnity in clause 40.2 applies, the Authority shall not make any admissions without the prior written consent of the Contractor but shall promptly notify the Contractor in writing of the receipt by the Authority of such claims and the Contractor shall, and in the following order of priority:*

- (a) conduct any litigation or negotiate any settlement arising therefrom in such a way that the Authority is able to continue using the Articles and any part or unit thereof without infringement or interference; or*
- (b) procure for the Authority the right to continue accepting, possessing, purchasing, distributing or using the Articles or any part or unit thereof; or*
- (c) modify or amend the Articles or infringing part thereof so that the same becomes non-infringing without affecting the capability and performance of the Articles or interoperability of the major components or subassemblies; or*

(d) replace the Articles or infringing part thereof by other Articles or part thereof identical capability and performance; or

(e) defend such claims."

58 By a letter dated 5 August 2011, the Plaintiffs' solicitors M/s Yu Sarn Audrey & Partners wrote to MINDEF stating that the Defendants' use of the infringing Vehicles constituted an infringement under the Patents Act, Cap. 221, and the Defendants' contract with Syntech was irrelevant. The Plaintiffs' solicitors further stated that the Defendants did not fulfil the requirements of Part XII of the Patents Act, Cap. 221 and were therefore not entitled to rely on the same. I refer to the letter at Tab 26 of "TCM-5."

59 Both the Defendants and the Plaintiffs continued to disagree on these two issues in the exchange of correspondence that followed, and in their statements to the press. I refer to the following at Tab 27 of "TCM-5":-

- (a) Letter from MINDEF to M/s Yu Sarn Audrey & Partners dated 5 August 2011;
- (b) Letter from M/s Yu Sarn Audrey & Partners to MINDEF dated 8 August 2011;
- (c) Letter from M/s Yu Sarn Audrey & Partners to MINDEF dated 17 August 2011;

- (d) Letter from MINDEF to M/s Yu Sarn Audrey & Partners dated 19 August 2011;
- (e) Newspaper article titled "Doctors claim Mindef copied their 'clinic on wheels' in The Straits Times dated 7 February 2012; and
- (f) Letter titled "It's the vendor, not Mindef, who's defending docs' patent suit" in The Straits Times dated 13 February 2012.

60 I also refer to the Youtube video titled "MINDEF being sued for Intellectual Property right [sic] -07Feb2012" at **Tab 1** of "TCM-5."

61 It appears that the vehicles were eventually withdrawn and not displayed during NDP 2011.

62 However, I believe that the Defendants also deployed the infringing vehicles during NDP 2012. I refer to two photographs of the infringing vehicles at the coach carpark near the Singapore Flyer on 4 August 2012, at **Tab 28** of "TCM-5."

63 I further believe that the Defendants have continued to use vehicles that infringe the Plaintiffs' patent. On 20 September 2012, the Plaintiffs and their experts attended at Nee Soon Camp for an inspection of the infringing vehicles. 64 photographs of the infringing vehicles were taken during the inspection. I refer to

the CD at Tab 29 of "TCM-5." It was clear that the Defendants have continued to use, and will continue to use, the vehicles as part of their operational requirements.

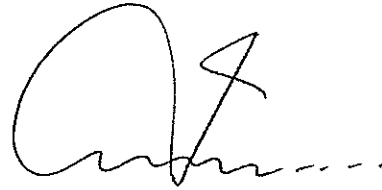
64 In the premises, the Plaintiffs claim:-

- (a) A declaration that the Defendants whether acting by their directors, officers, employees, servants or agents, or any of them or otherwise howsoever, have infringed Singapore Patent No. 113446;
- (b) A declaration that the Defendants should deliver up or destroy upon oath all infringing products or any article in which that product is inextricably comprised or any material or implement the predominant use of which has been in the creation of the infringing products, in the Defendants' possession, power, custody or control;
- (c) An inquiry as to damages or alternatively, at the Plaintiffs' option, an account of profits and an order for payment of all sums due;
- (d) Interest pursuant to Section 12 of the Civil Law Act (Cap 43) or under the equitable jurisdiction of the Court;
- (e) Costs; and

- (f) Such further and/or other relief as this Honourable Court deems fit and just.

AFFIRMED by the abovenamed
 TING CHOON MENG in Singapore
 on this 10th day of January 2013

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Before me,

A COMMISSIONER FOR OATHS

This affidavit is filed on behalf of the Plaintiffs.

