

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

MCAIRLAIDS, INC.)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 7:13-cv-00193
)	
KIMBERLY-CLARK CORPORATION,)	TRIAL BY JURY DEMANDED
)	
KIMBERLY-CLARK WORLDWIDE, INC., and)	
)	
KIMBERLY-CLARK GLOBAL SALES, LLC)	
)	
Defendants.)	

FIRST AMENDED COMPLAINT

Plaintiff, McAirloads, Inc. (“McAirloads”), by counsel, for its Complaint against Defendants Kimberly-Clark Corporation (“Kimberly-Clark Corp.”), Kimberly-Clark Worldwide, Inc. (“Kimberly-Clark Worldwide”), and Kimberly-Clark Global Sales, LLC (“Kimberly-Clark Global Sales”) (collectively, “Kimberly-Clark” or “Defendants”), states as follows:

PARTIES

1. Upon information and belief, Defendants are engaged in the design, manufacture, sale within the United States, offering for sale in the United States, use within the United States, importation into the United States, and/or sale after importation into the United States of products utilizing the process patented by United States Patent No. 6,675,702 (the “’702 Patent”), including related absorbent paper products, and components thereof. Upon information and belief, Defendants market and sell these products worldwide, including in the United States,

directly and through their channel business partners and various retailers, including through retail stores and company websites.

2. Plaintiff McAirLaid is a Virginia corporation with its principal place of business in Rocky Mount, Virginia.

3. Upon information and belief, Defendant Kimberly-Clark Corp. is a Delaware corporation with its principal place of business in Neenah, Wisconsin.

4. Upon information and belief, Defendant Kimberly-Clark Worldwide is a Delaware corporation with its principal place of business in Neenah, Wisconsin. Kimberly-Clark Worldwide is a subsidiary of Kimberly-Clark Corp.

5. Upon information and belief, and according to Kimberly-Clark's website for the product made using the process claimed by the '702 Patent, all names, logos, and trademarks related to that product are the property of Kimberly-Clark Worldwide or its affiliates. Upon information and belief, Kimberly-Clark Worldwide owns the majority of the patents and trademarks of the global Kimberly-Clark entities, including the patent application and trademark for the product at issue in this Complaint.

6. Upon information and belief, Defendant Kimberly-Clark Global Sales is a Delaware limited liability company with its principal place of business in Neenah, Wisconsin. Kimberly-Clark Global Sales is a subsidiary of Kimberly-Clark Corp.

7. Upon information and belief, and according to the packaging for the product made using the process claimed by the '702 Patent, Kimberly-Clark Global Sales distributes that product in the United States, including in Virginia.

8. Defendants Kimberly-Clark Corp., Kimberly-Clark Worldwide, and Kimberly-Clark Global Sales all appear on the face of the packaging for the product made using the process claimed by the '702 Patent.

9. Defendants Kimberly-Clark Corp., Kimberly-Clark Worldwide, and Kimberly-Clark Global Sales are all incorporated and/or referred to within the scope of the contract with the Chinese manufacturing company that manufactures the product using the process claimed by the '702 Patent.

JURISDICTION AND VENUE

10. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

12. Upon information and belief, Kimberly-Clark regularly transacts business in the Commonwealth of Virginia and in this judicial district by, among other things, the demonstration, offer for sale and/or sale of products made with a process meeting the limitations set forth in the claims of the '702 Patent.

13. Upon information and belief, Defendants are subject to personal jurisdiction in the Western District of Virginia (the "District"), consistent with the principles of due process and the Virginia Long Arm Statute, because Defendants offer their products for sale in this District, have transacted business in this District, have committed patent infringement in this District (whether directly and/or by inducement), and/or have placed infringing products into the stream of commerce through established distribution channels with the expectation that such products will be purchased and/or used by residents of this District.

14. Upon information and belief, this Court has personal jurisdiction over Kimberly-Clark because Kimberly-Clark transacts substantial business in the Commonwealth of Virginia and because Kimberly-Clark is subject to jurisdiction under Virginia Code Section 8.01-328.1.

15. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

FACTUAL BACKGROUND

16. McAirLaid is in the business of manufacturing, marketing, and selling airlaid and other absorbent paper products incorporating airforming and thermomechanical bonding technology.

17. McAirLaid is the owner by assignment from the inventor Alexander Maksimow of the '702 Patent, entitled "Method and Device for Producing a Strip of Cellulose Fiber Material for Use in Hygiene Articles," which was duly and legally issued by the United States Patent and Trademark Office on January 13, 2004. A copy of the '702 Patent is attached hereto as **Exhibit A**. Defendants are infringing, directly and/or indirectly, by making, using, offering to sell, and/or selling in the United States, and/or importing into the United States, products or processes that practice one or more inventions claimed in the '702 Patent.

18. Kimberly-Clark designs, sells, offers to sell, uses, and/or imports GoodNites Disposable Bed Mats that incorporate airforming and thermomechanical bonding technology.

19. Defendants admitted in a signed and sworn interrogatory response dated April 5, 2013 describing the process used to make their GoodNites Disposable Bed Mats that the manufacturing process utilizes the process covered by the '702 Patent.

20. Defendants have infringed and are still infringing the '702 Patent by making, selling, importing, and/or using products that are made using the patented process.

21. McAirlands has complied with the statutory requirement of placing a notice of the '702 Patent on all relevant products it manufactures and sells and has given the Defendants written notice of the infringement.

22. Upon information and belief, Kimberly-Clark was aware of McAirlands' commercial products made in accordance with the '702 Patent as well as the tremendous success and reputation that McAirlands products enjoy in the marketplace.

23. Upon information and belief, Kimberly-Clark sought to exploit the success and reputation enjoyed by McAirlands' products that incorporate the inventions claimed in the '702 Patent.

24. Upon information and belief, Kimberly-Clark had actual or constructive knowledge of the '702 Patent.

25. McAirlands and all of the Defendants entered into a signed "Confidential Disclosure Agreement" on April 17, 2009. Pursuant to that agreement, McAirlands disclosed to Kimberly-Clark its proprietary and patented manufacturing processes for making absorbent pads in a presentation dated November 3, 2011. Just a few days after that presentation, a patent application for a "Disposable Absorbent Pad," was filed with the U.S. Patent & Trademark Office naming five Kimberly-Clark employees as the sole inventors. This patent application was later assigned to Kimberly-Clark Worldwide.

26. Upon information and belief, Kimberly-Clark oversaw, directed, instructed, and/or exercised control over its Chinese manufacturer to make products using the patented process described in the '702 Patent, including, by way of example and not limitation, the GoodNites Disposable Bed Mats. Kimberly-Clark knew or should have known that the products would be made in a manner that infringed the '702 Patent. Kimberly-Clark then promoted, marketed,

and/or supplied the products made by the infringing process to its subsidiaries and other customers to market, sell, offer to sell, distribute, and/or use those products, including instructions on how they were to be marketed, sold, offered to sell, distributed, and/or used.

27. Upon information and belief, there are not substantial non-infringing uses of the GoodNites Disposable Bed Mats and/or the process used to make them.

28. Defendants have profited through infringement of the '702 Patent. As a result of Defendants' unlawful infringement of the '702 Patent, McAirlands has suffered and will continue to suffer damage. Accordingly, McAirlands is entitled to recover from Defendants the damages suffered by McAirlands as a result of Defendants' unlawful acts.

29. Upon information and belief, Defendants' infringement of the '702 Patent is willful and deliberate, entitling McAirlands to enhanced damages and reasonable attorney fees and costs.

30. Upon information and belief, Defendants intend to continue their unlawful infringing activity, and McAirlands continues to and will continue to suffer irreparable harm—for which there is no adequate remedy at law—from such unlawful infringing activity unless Defendants are enjoined by this Court.

COUNT ONE - INFRINGEMENT OF THE '702 PATENT

31. McAirlands hereby realleges and incorporates the allegations contained in paragraphs 1 through 30, *supra*, as though fully set forth herein.

32. McAirlands is the owner of all right, title, and interest in the '702 Patent.

33. Defendants have infringed and continue to infringe, both directly and indirectly, one or more claims of the '702 Patent by making, using, offering for sale, selling, and/or importing into the United States products that infringe one or more claims of the '702 Patent, including, by way of example and not limitation, the GoodNites Disposable Bed Mats. Regarding indirect

infringement, Defendants have induced and continue to induce others to infringe one or more claims of the '702 Patent.

34. In the alternative or in addition, Defendants import, offer to sell, sell, and/or use within the United States products which are made by a process that infringes the '702 Patent.

35. Defendants' infringing acts have been, and continue to be, willful and wanton.

36. McAirlands has been, and will continue to be, damaged by Defendants' infringement and will be irreparably damaged unless Defendants' infringement is enjoined.

PRAYER FOR RELIEF

WHEREFORE, McAirlands prays that this Court enter judgment against Defendants as follows:

A. That this Court find that Defendants have infringed one or more claims of the '702 Patent.

B. That this Court preliminarily and permanently enjoin, pursuant to 35 U.S.C. § 283, Defendants, their officers, agents, attorneys and employees, as well as those acting in privity or concert with any of the foregoing, from further infringement of '702 Patent for its full term.

C. That this Court award damages to McAirlands, including pre-judgment and post-judgment interest, in an amount adequate to compensate McAirlands for Defendants' infringement of one or more claims of the '702 Patent.

D. That this Court award McAirlands compensatory damages as a result of Defendants' infringement of the '702 Patent, together with interest and costs, and in no event less than a reasonable royalty.

E. That this Court declare that Defendants' infringement of the '702 Patent has been willful and deliberate.

F. That this Court award McAirLaid's treble damages and pre-judgment interest under 35 U.S.C. § 284 as a result of Defendants' willful and deliberate infringement of the '702 Patent.

G. That this Court declare this case exceptional and award McAirLaid's its expenses, costs, and attorneys fees in accordance with 35 U.S.C. §§ 284 and 285 and Rule 54(d) of the Federal Rules of Civil Procedure.

H. That this Court award McAirLaid's any such other relief as is deemed just and proper by the Court.

JURY DEMAND

McAirLaid's demands a trial by jury on all matters and issues triable by a jury.

Dated: June 13, 2013

Respectfully submitted,

MCAIRLAIDS, INC.

By /s/ Joshua F. P. Long

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