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**UNITED STATES DISTRICT COURT  
 DISTRICT OF NEW JERSEY**

BLUE GENTIAN, LLC and  
 NATIONAL EXPRESS, INC.,

Plaintiffs,

v.

WAL-MART STORES, INC.,  
 D/B/A SAM’S CLUB and SAM’S  
 WHOLESALE CLUB,

Defendant.

: Civil Action No. 1:13-cv-7099-NLH-KMW  
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 : Hon. Noel L. Hillman, U.S.D.J.  
 : Hon. Karen M. Williams, U.S.M.J.  
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**THIRD AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiffs, BLUE GENTIAN, LLC (“Blue Gentian”) and NATIONAL EXPRESS, INC. (“National Express”) sue Defendant, WAL-MART STORES, INC., D/B/A SAM’S CLUB and SAM’S WHOLESALE CLUB (“Wal-Mart”), for Patent Infringement under the Patent Act and complain as follows:

**JURISDICTION AND VENUE**

1. This is an action for Patent Infringement under the Patent Act, 35 U.S.C. § 271.
2. This court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1338(a).

3. This court has personal jurisdiction over Wal-Mart, which regularly conducts business throughout the State of New Jersey, including selling and offering to sell the accused Flex-Able Hose product in its “Sam’s Club” and/or “Sam’s Wholesale Club” retail locations located therein.

4. Venue is proper in this District, pursuant to 28 U.S.C. §§ 1391(b & c) and 1400(b), because Wal-Mart is subject to personal jurisdiction in the District and has committed acts of Patent Infringement in the District.

### **THE PARTIES**

5. Plaintiff Blue Gentian is a Florida limited liability company having its principal place of business at 516 Les Jardin Drive, Palm Beach Gardens, Florida.

6. Plaintiff National Express is a Connecticut corporation having its principal place of business at 2 Morgan Avenue, Norwalk, Connecticut.

7. Defendant Wal-Mart is a Delaware corporation having its principal place of business at 702 SW 8<sup>th</sup> Street, Bentonville, Arkansas.

### **BACKGROUND**

8. Blue Gentian’s principal, Michael Berardi, has conceived and invented a novel hose product that is light in weight, does not kink when unwrapped or uncoiled, and can be substantially reduced in length and width when not in use simply by turning off the flow of water into it. The product has been marketed in the United States, under the XHose® trademark, since March 24, 2012.

9. Blue Gentian is the owner of all intellectual property rights in connection with the XHose® product invented by Berardi including, without limitation, the patent rights asserted in this Complaint. Blue Gentian is the owner of U.S. Patent No. 8,757,213, entitled “Commercial

Hose” and issued on June 24, 2014 (“the ‘213 Patent”). A copy of the ‘213 Patent is attached as Exhibit “A” hereto. The ‘213 Patent is a continuation-in-part of the invention disclosed in U.S. Patent No. 8,479,776, entitled “Expandable Garden Hose” and issued on July 9, 2013 (“the ‘776 Patent”), which is a continuation-in-part of the inventions disclosed in U.S. Patent No. 8,291,941, entitled “Expandable and Contractible Hose” and issued on October 23, 2012 (“the ‘941 Patent”) and U.S. Patent No. 8,291,942, entitled “Expandable Hose Assembly” and also issued on October 23, 2012 (“the ‘942 Patent”). Copies of the ‘776, ‘941 and ‘942 Patents are attached as Exhibits “B”, “C” and “D” hereto, respectively.

10. Blue Gentian is also the owner of all right, title and interest in and to certain U.S. Design Patents depicting ornamental designs also invented by Berardi. Specifically, Blue Gentian is the owner of U.S. Design Patent D722,681, entitled “Expandable Hose” and issued on February 17, 2015 (“the ‘681 Patent”), which is a continuation-in-part of the ornamental design shown in U.S. Design Patent D724,186, entitled “Expandable Hose Assembly” and issued on March 10, 2015 (“the ‘186 Patent”). Copies of the ‘681 and ‘186 Patents are attached as Exhibits “E” and “F” hereto, respectively.

11. Blue Gentian has granted National Express the exclusive right under the ‘941, ‘942, ‘776, ‘213, ‘681 and ‘186 Patents (collectively, “the Patents-in-Suit”) to make, use, sell, offer for sale, import, market, promote and/or distribute expandable/retractable hoses embodying the inventions disclosed therein, within certain non-geographic markets, including the retail market in which Wal-Mart sells the accused Flex-Able Hose product. As such, National Express maintains the right to exclude all others from practicing the patents within this defined market.

12. Consistent with such license, both the packaging for the XHose® and the product’s website advised of pending patent protection as early as March, 2012, and have also

advised of the Patents-in-Suit after their issuance. In fact, Wal-Mart sold the XHose® in its “Wal-Mart” stores in January and February 2013, selling all units that had been shipped to test the market for the product. The XHose® was marked with the ‘941 and ‘942 Patents, in accordance with 35 U.S.C. § 287, during that entire time period. A sample Wal-Mart display of the XHose®, with the patent markings included on a white label on the lower left corner of the product’s packaging, is depicted in Exhibit “G” hereto.

13. Indicative of the ingenuity and popularity of the XHose® product, Wal-Mart has promoted and sold iterations of the “Flex-Able Hose” produced by Tristar Products, Inc. (“Tristar”), an infringing expandable hose product embodying the inventions protected under the Patents-in-Suit, in its Sam’s Club and/or Sam’s Wholesale Club retail locations.

14. Wal-Mart received formal written notice of the ‘941, ‘942 and ‘776 Patents with respect to the Flex-Able Hose product through a letter to its president dated November 21, 2013. A copy of this letter is attached as Exhibit “H” hereto. Plaintiffs advised Wal-Mart of the impending issuance of the ‘213 Patent in a joint letter of counsel (D.E. # 51) to the Court submitted on June 6, 2014. Plaintiffs also advised Wal-Mart of the impending issuance of the ‘681 and ‘186 Patents in a joint letter of counsel (D.E. # 73) to the Court submitted on March 2, 2015. To date, Wal-Mart has issued only a generic, non-committal response to the November 21, 2013 letter, while willfully continuing to infringe the Patents-in-Suit.

15. Over the course of this litigation, Tristar redesigned certain features related to the inlet and outlet couplers and flow restrictor of the Flex-Able Hose. Tristar has also marketed a “Tough Grade” Flex-Able Hose constructed of purportedly stronger materials than the original Flex-Able Hose. Tristar has also incorporated the Flex-Able Hose into its sales of a pressure washer product under the brand “EZ-Jet”. Screen shots from Tristar’s websites

“www.flexablehose.com” and “www.tryezjet.com” promoting these products are attached as composite Exhibit “I” hereto. Discovery may be required to determine which of these iterations has been sold by Wal-Mart at its “Sam’s Club” and/or “Sam’s Wholesale Club” retail locations.

16. Tristar has also recently introduced yet another iteration of the Flex-Able Hose, advertised and sold as the “Extreme Flex-Able Hose” which also infringes the Patents-in-Suit. The product appears to be sold exclusively by Wal-Mart through its “Sam’s Club” and/or “Sam’s Wholesale Club” retail locations and website. A photograph of the product and its packaging is attached as Exhibit “J” hereto.

**COUNT I**  
**DIRECT PATENT INFRINGEMENT**  
**(‘941 Patent)**

17. This Count alleges direct Patent Infringement of the ‘941 Patent against Wal-Mart, pursuant to 35 U.S.C. § 271(a). Plaintiffs repeat and reallege Paragraphs 1-16 above.

18. Wal-Mart has infringed and is still infringing one or more claims of the ‘941 Patent by selling and offering to sell a hose product embodying the invention protected under the ‘941 Patent, and will continue to do so unless enjoined by this Court.

19. Wal-Mart’s acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

20. Wal-Mart’s acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Wal-Mart is enjoined from doing so by this Court.

**COUNT II**  
**INDIRECT PATENT INFRINGEMENT**  
**(‘941 Patent)**

21. This Count alleges indirect Patent Infringement of the ‘941 Patent against Wal-Mart, pursuant to 35 U.S.C. § 271(b) and (c). Plaintiffs repeat and reallege Paragraphs 1-16 above.

**A. INDUCEMENT OF INFRINGEMENT**

22. Wal-Mart has induced others to infringe and continues to induce others to infringe one or more claims of the ‘941 Patent.

23. Wal-Mart’s customers, by using the accused Flex-Able Hose product, have directly infringed and continue to directly infringe one or more claims of the ‘941 Patent.

24. Wal-Mart should have known, and has known, that selling and offering to sell the Flex-Able Hose product would cause the direct infringement of the ‘941 Patent.

25. Despite having knowledge of the issuance of the ‘941 Patent since at least the date of receipt of notice from Plaintiffs, Wal-Mart has sold, offered to sell and promoted the accused Flex-Able Hose product with specific intent to encourage and cause its customers’ infringement of the ‘941 Patent.

26. Since at least the date of receipt of notice from Plaintiffs, Wal-Mart has had actual knowledge of the claims of the ‘941 Patent, and the fact that the Flex-Able Hose product infringes one or more of those claims. Upon belief, it has taken no steps to remedy any infringement.

27. Wal-Mart’s acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

28. Wal-Mart's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Wal-Mart is enjoined from doing so by this Court.

**B. CONTRIBUTORY INFRINGEMENT**

29. Wal-Mart has contributorily infringed and continues to contributorily infringe the '941 Patent.

30. Wal-Mart's customers, by using the accused Flex-Able Hose product, have directly infringed and continue to directly infringe one or more claims of the '941 Patent.

31. Despite having knowledge of the issuance of the '941 Patent since at least the date of receipt of notice from Plaintiffs, Wal-Mart has sold, offered to sell and promoted the accused Flex-Able Hose product with the specific intent to encourage and cause its customers' infringement of the '941 Patent.

32. Since at least the date of receipt of notice from Plaintiffs, Wal-Mart has had actual knowledge of the claims of the '941 Patent, and the fact that the Flex-Able Hose product infringes one or more of those claims. Upon belief, it has taken no steps to remedy any infringement.

33. Wal-Mart has sold and offered to sell the accused Flex-Able Hose product to practice the invention claimed in one or more claims of the '941 Patent, and has done so with knowledge that the product is especially made or adapted for use in an infringement of the '941 Patent.

34. The Flex-Able Hose product is not a staple article of commerce suitable for substantial non-infringing use. It is assembled from manufactured components for a specific function having no purpose other than infringement.

35. Wal-Mart's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

36. Wal-Mart's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Wal-Mart is enjoined from doing so by this Court.

**COUNT III**  
**DIRECT PATENT INFRINGEMENT**  
**(‘942 Patent)**

37. This Count alleges direct Patent Infringement of the ‘942 Patent against Wal-Mart, pursuant to 35 U.S.C. § 271(a). Plaintiffs repeat and reallege Paragraphs 1-16 above.

38. Wal-Mart has infringed and is still infringing one or more claims of the ‘942 Patent by selling and offering to sell a hose product embodying the invention protected under the ‘942 Patent, and will continue to do so unless enjoined by this Court.

39. Wal-Mart's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

40. Wal-Mart's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are



causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Wal-Mart is enjoined from doing so by this Court.

**COUNT IV**  
**INDIRECT PATENT INFRINGEMENT**  
**(‘942 Patent)**

41. This Count alleges indirect Patent Infringement of the ‘942 Patent against Wal-Mart, pursuant to 35 U.S.C. § 271(b) and (c). Plaintiffs repeat and reallege Paragraphs 1-16 above.

**A. INDUCEMENT OF INFRINGEMENT**

42. Wal-Mart has induced others to infringe and continues to induce others to infringe one or more claims of the ‘942 Patent.

43. Wal-Mart’s customers, by using the accused Flex-Able Hose product, have directly infringed and continue to directly infringe one or more claims of the ‘942 Patent.

44. Wal-Mart should have known, and has known, that selling and offering to sell the Flex-Able Hose product would cause the direct infringement of the ‘942 Patent.

45. Despite having knowledge of the issuance of the ‘942 Patent since at least the date of receipt of notice from Plaintiffs, Wal-Mart has sold, offered to sell and promoted the accused Flex-Able Hose product with specific intent to encourage and cause its customers’ infringement of the ‘942 Patent.

46. Since at least the date of receipt of notice from Plaintiffs, Wal-Mart has had actual knowledge of the claims of the ‘942 Patent, and the fact that the Flex-Able Hose product infringes one or more of those claims. Upon belief, it has taken no steps to remedy any infringement.

47. Wal-Mart's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

48. Wal-Mart's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Wal-Mart is enjoined from doing so by this Court.

## **B. CONTRIBUTORY INFRINGEMENT**

49. Wal-Mart has contributorily infringed and continue to contributorily infringe the '942 Patent.

50. Wal-Mart's customers, by using the accused Flex-Able Hose product, have directly infringed and continue to directly infringe one or more claims of the '942 Patent.

51. Despite having knowledge of the issuance of the '942 Patent since at least the date of receipt of notice from Plaintiffs, Wal-Mart has sold, offered to sell and promoted the accused Flex-Able Hose product with the specific intent to encourage and cause its customers' infringement of the '942 Patent.

52. Since at least the date of receipt of notice from Plaintiffs, Wal-Mart has had actual knowledge of the claims of the '942 Patent, and the fact that the Flex-Able Hose product infringes one or more of those claims. Upon belief, it has taken no steps to remedy any infringement.

53. Wal-Mart has sold and offered to sell the accused Flex-Able Hose product to practice the invention claimed in one or more claims of the '942 Patent, and has done so with

knowledge that the product is especially made or adapted for use in an infringement of the '942 Patent.

54. The Flex-Able Hose product is not a staple article of commerce suitable for substantial non-infringing use. It is assembled from manufactured components for a specific function having no purpose other than infringement.

55. Wal-Mart's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

56. Wal-Mart's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Wal-Mart is enjoined from doing so by this Court.

**COUNT V**  
**DIRECT PATENT INFRINGEMENT**  
**('776 Patent)**

57. This Count alleges direct Patent Infringement of the '776 Patent against Wal-Mart, pursuant to 35 U.S.C. § 271(a). Plaintiffs repeat and reallege Paragraphs 1-16 above.

58. Wal-Mart has infringed and is still infringing one or more claims of the '776 Patent by selling and offering to sell a hose product embodying the invention protected under the '776 Patent, and will continue to do so unless enjoined by this Court.

59. Wal-Mart's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

60. Wal-Mart's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Wal-Mart is enjoined from doing so by this Court.

**COUNT VI**  
**INDIRECT PATENT INFRINGEMENT**  
**(‘776 Patent)**

61. This Count alleges indirect Patent Infringement of the ‘776 Patent against Wal-Mart, pursuant to 35 U.S.C. § 271(b) and (c). Plaintiffs repeat and reallege Paragraphs 1-16 above.

**A. INDUCEMENT OF INFRINGEMENT**

62. Wal-Mart has induced others to infringe and continues to induce others to infringe one or more claims of the ‘776 Patent.

63. Wal-Mart's customers, by using the accused Flex-Able Hose product, have directly infringed and continue to directly infringe one or more claims of the ‘776 Patent.

64. Wal-Mart should have known, and has known, that selling and offering to sell the Flex-Able Hose product would cause the direct infringement of the ‘776 Patent.

65. Despite having knowledge of the issuance of the ‘776 Patent since at least the date of receipt of notice from Plaintiffs, Wal-Mart has sold, offered to sell and promoted the accused Flex-Able Hose product with specific intent to encourage and cause its customers' infringement of the ‘776 Patent.

66. Since at least the date of receipt of notice from Plaintiffs, Wal-Mart has had actual knowledge of the claims of the ‘776 Patent, and the fact that the Flex-Able Hose product

infringes one or more of those claims. Upon belief, it has taken no steps to remedy any infringement.

67. Wal-Mart's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

68. Wal-Mart's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Wal-Mart is enjoined from doing so by this Court.

#### **B. CONTRIBUTORY INFRINGEMENT**

69. Wal-Mart has contributorily infringed and continues to contributorily infringe the '776 Patent.

70. Wal-Mart's customers, by using the accused Flex-Able Hose product, have directly infringed and continue to directly infringe one or more claims of the '776 Patent.

71. Despite having knowledge of the issuance of the '776 Patent since at least the date of receipt of notice from Plaintiffs, Wal-Mart has sold, offered to sell and promoted the accused Flex-Able Hose product with the specific intent to encourage and cause its customers' infringement of the '776 Patent.

72. Since at least the date of receipt of notice from Plaintiffs, Wal-Mart has had actual knowledge of the claims of the '776 Patent, and the fact that the Flex-Able Hose product infringes one or more of those claims. Upon belief, it has taken no steps to remedy any infringement.

73. Wal-Mart has sold and offered to sell the accused Flex-Able Hose product to practice the invention claimed in one or more claims of the '776 Patent, and has done so with knowledge that the product is especially made or adapted for use in an infringement of the '776 Patent.

74. The Flex-Able Hose product is not a staple article of commerce suitable for substantial non-infringing use. It is assembled from manufactured components for a specific function having no purpose other than infringement.

75. Wal-Mart's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

76. Wal-Mart's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Wal-Mart is enjoined from doing so by this Court.

**COUNT VII**  
**DIRECT PATENT INFRINGEMENT**  
**('213 Patent)**

77. This Count alleges direct Patent Infringement of the '213 Patent against Wal-Mart, pursuant to 35 U.S.C. § 271(a). Plaintiffs repeat and reallege Paragraphs 1-16 above.

78. Wal-Mart has infringed and is still infringing one or more claims of the '213 Patent by selling and offering to sell a hose product embodying the invention protected under the '213 Patent, and will continue to do so unless enjoined by this Court.

79. Wal-Mart's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

80. Wal-Mart's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Wal-Mart is enjoined from doing so by this Court.

**COUNT VIII**  
**INDIRECT PATENT INFRINGEMENT**  
**(‘213 Patent)**

81. This Count alleges indirect Patent Infringement of the ‘213 Patent against Wal-Mart, pursuant to 35 U.S.C. § 271(b) and (c). Plaintiffs repeat and reallege Paragraphs 1-16 above.

**A. INDUCEMENT OF INFRINGEMENT**

82. Wal-Mart has induced others to infringe and continues to induce others to infringe one or more claims of the ‘213 Patent.

83. Wal-Mart's customers, by using the accused Flex-Able Hose product, have directly infringed and continue to directly infringe one or more claims of the ‘213 Patent.

84. Wal-Mart should have known, and has known, that selling and offering to sell the Flex-Able Hose product would cause the direct infringement of the ‘213 Patent.

85. Despite having knowledge of the issuance of the ‘213 Patent since at least the date of receipt of notice from Plaintiffs, Wal-Mart has sold, offered to sell and promoted the accused Flex-Able Hose product with specific intent to encourage and cause its customers' infringement of the ‘213 Patent.

86. Since at least the date of receipt of notice from Plaintiffs, Wal-Mart has had actual knowledge of the claims of the '213 Patent, and the fact that the Flex-Able Hose product infringes one or more of those claims. Upon belief, it has taken no steps to remedy any infringement.

87. Wal-Mart's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

88. Wal-Mart's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Wal-Mart is enjoined from doing so by this Court.

#### **B. CONTRIBUTORY INFRINGEMENT**

89. Wal-Mart has contributorily infringed and continues to contributorily infringe the '213 Patent.

90. Wal-Mart's customers, by using the accused Flex-Able Hose product, have directly infringed and continue to directly infringe one or more claims of the '213 Patent.

91. Despite having knowledge of the issuance of the '213 Patent since at least the date of receipt of notice from Plaintiffs, Wal-Mart has sold, offered to sell and promoted the accused Flex-Able Hose product with the specific intent to encourage and cause its customers' infringement of the '213 Patent.

92. Since at least the date of receipt of notice from Plaintiffs, Wal-Mart has had actual knowledge of the claims of the '213 Patent, and the fact that the Flex-Able Hose product



infringes one or more of those claims. Upon belief, it has taken no steps to remedy any infringement.

93. Wal-Mart has sold and offered to sell the accused Flex-Able Hose product to practice the invention claimed in one or more claims of the '213 Patent, and has done so with knowledge that the product is especially made or adapted for use in an infringement of the '213 Patent.

94. The Flex-Able Hose product is not a staple article of commerce suitable for substantial non-infringing use. It is assembled from manufactured components for a specific function having no purpose other than infringement.

95. Wal-Mart's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

96. Wal-Mart's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Wal-Mart is enjoined from doing so by this Court.

**COUNT IX**  
**DIRECT PATENT INFRINGEMENT**  
**('681 Patent)**

97. This Count alleges direct Patent Infringement of the '681 Patent against Wal-Mart, pursuant to 35 U.S.C. § 271(a). Plaintiffs repeat and reallege Paragraphs 1-16 above.

98. Wal-Mart has infringed and is still infringing the '681 Patent by selling and offering to sell a hose product embodying the invention protected under the '681 Patent, and will continue to do so unless enjoined by this Court.

99. Wal-Mart's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

100. Wal-Mart's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Wal-Mart is enjoined from doing so by this Court.

**COUNT X**  
**INDIRECT PATENT INFRINGEMENT**  
**(‘681 Patent)**

101. This Count alleges indirect Patent Infringement of the ‘681 Patent against Wal-Mart, pursuant to 35 U.S.C. § 271(b) and (c). Plaintiffs repeat and reallege Paragraphs 1-16 above.

**A. INDUCEMENT OF INFRINGEMENT**

102. Wal-Mart has induced others to infringe and continues to induce others to infringe one or more claims of the ‘681 Patent.

103. Wal-Mart's customers, by using the accused Flex-Able Hose product, have directly infringed and continue to directly infringe the ‘681 Patent.

104. Wal-Mart should have known, and has known, that selling and offering to sell the Flex-Able Hose product would cause the direct infringement of the ‘681 Patent.

105. Despite having knowledge of the issuance of the ‘681 Patent since at least the date of receipt of notice from Plaintiffs, Wal-Mart has sold, offered to sell and promoted the accused Flex-Able Hose product with specific intent to encourage and cause its customers' infringement of the ‘681 Patent.

106. Since at least the date of receipt of notice from Plaintiffs, Wal-Mart has had actual knowledge of the '681 Patent and the fact that the Flex-Able Hose product is an infringement thereof. Upon belief, it has taken no steps to remedy any infringement.

107. Wal-Mart's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

108. Wal-Mart's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Wal-Mart is enjoined from doing so by this Court.

#### **B. CONTRIBUTORY INFRINGEMENT**

109. Wal-Mart has contributorily infringed and continues to contributorily infringe the '681 Patent.

110. Wal-Mart's customers, by using the accused Flex-Able Hose product, have directly infringed and continue to directly infringe the '681 Patent.

111. Despite having knowledge of the issuance of the '681 Patent since at least the date of receipt of notice from Plaintiffs, Wal-Mart has sold, offered to sell and promoted the accused Flex-Able Hose product with the specific intent to encourage and cause its customers' infringement of the '681 Patent.

112. Since at least the date of receipt of notice from Plaintiffs, Wal-Mart has had actual knowledge of the '681 Patent and the fact that the Flex-Able Hose product is an infringement thereof. Upon belief, it has taken no steps to remedy any infringement.

113. Wal-Mart has sold and offered to sell the accused Flex-Able Hose product to practice the invention claimed in one or more claims of the '681 Patent, and has done so with knowledge that the product is especially made or adapted for use in an infringement of the '681 Patent.

114. The Flex-Able Hose product is not a staple article of commerce suitable for substantial non-infringing use. It is assembled from manufactured components for a specific appearance having no purpose other than infringement.

115. Wal-Mart's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

116. Wal-Mart's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Wal-Mart is enjoined from doing so by this Court.

**COUNT XI**  
**DIRECT PATENT INFRINGEMENT**  
**('186 Patent)**

117. This Count alleges direct Patent Infringement of the '186 Patent against Wal-Mart, pursuant to 35 U.S.C. § 271(a). Plaintiffs repeat and reallege Paragraphs 1-16 above.

118. Wal-Mart has infringed and is still infringing the '186 Patent by selling and offering to sell a hose product embodying the invention protected under the '186 Patent, and will continue to do so unless enjoined by this Court.

119. Wal-Mart's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

120. Wal-Mart's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Wal-Mart is enjoined from doing so by this Court.

**COUNT XII**  
**INDIRECT PATENT INFRINGEMENT**  
**(‘186 Patent)**

121. This Count alleges indirect Patent Infringement of the ‘186 Patent against Wal-Mart, pursuant to 35 U.S.C. § 271(b) and (c). Plaintiffs repeat and reallege Paragraphs 1-16 above.

**A. INDUCEMENT OF INFRINGEMENT**

122. Wal-Mart has induced others to infringe and continues to induce others to infringe one or more claims of the ‘186 Patent.

123. Wal-Mart's customers, by using the accused Flex-Able Hose product, have directly infringed and continue to directly infringe the ‘186 Patent.

124. Wal-Mart should have known, and has known, that selling and offering to sell the Flex-Able Hose product would cause the direct infringement of the ‘186 Patent.

125. Despite having knowledge of the issuance of the ‘186 Patent since at least the date of receipt of notice from Plaintiffs, Wal-Mart has sold, offered to sell and promoted the accused Flex-Able Hose product with specific intent to encourage and cause its customers' infringement of the ‘186 Patent.

126. Since at least the date of receipt of notice from Plaintiffs, Wal-Mart has had actual knowledge of the '186 Patent and the fact that the Flex-Able Hose product is an infringement thereof. Upon belief, it has taken no steps to remedy any infringement.

127. Wal-Mart's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

128. Wal-Mart's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Wal-Mart is enjoined from doing so by this Court.

#### **B. CONTRIBUTORY INFRINGEMENT**

129. Wal-Mart has contributorily infringed and continues to contributorily infringe the '186 Patent.

130. Wal-Mart's customers, by using the accused Flex-Able Hose product, have directly infringed and continue to directly infringe the '186 Patent.

131. Despite having knowledge of the issuance of the '186 Patent since at least the date of receipt of notice from Plaintiffs, Wal-Mart has sold, offered to sell and promoted the accused Flex-Able Hose product with the specific intent to encourage and cause its customers' infringement of the '186 Patent.

132. Since at least the date of receipt of notice from Plaintiffs, Wal-Mart has had actual knowledge of the '186 Patent and the fact that the Flex-Able Hose product is an infringement thereof. Upon belief, it has taken no steps to remedy any infringement.

133. Wal-Mart has sold and offered to sell the accused Flex-Able Hose product to practice the invention claimed in one or more claims of the '186 Patent, and has done so with knowledge that the product is especially made or adapted for use in an infringement of the '186 Patent.

134. The Flex-Able Hose product is not a staple article of commerce suitable for substantial non-infringing use. It is assembled from manufactured components for a specific appearance having no purpose other than infringement.

135. Wal-Mart's acts of infringement are willful, warranting the assessment of increased damages pursuant to 35 U.S.C. § 284, and warrant a finding that this is an exceptional case, pursuant to 35 U.S.C. § 285.

136. Wal-Mart's acts of infringement have occurred, are occurring and will continue to occur without the authority or license of Plaintiffs. These infringing acts have caused, are causing and will continue to cause injury to Plaintiffs, including irreparable injury and damages, unless and until Wal-Mart is enjoined from doing so by this Court.

#### **DEMAND FOR JURY TRIAL**

Plaintiffs request that all issues in this case be tried to a jury.

WHEREFORE, Plaintiffs pray that this Court:

A. Enter judgment against Wal-Mart for infringement of the '941 Patent and permanently enjoin Wal-Mart, its principals, officers, directors, agents, employees, subsidiaries, affiliates and all other persons in active concert or participation with them, from further acts of infringement, pursuant to 35 U.S.C. § 283;

B. Enter judgment against Wal-Mart for infringement of the '942 Patent and permanently enjoin Wal-Mart, its principals, officers, directors, agents, employees, subsidiaries,

affiliates and all other persons in active concert or participation with them, from further acts of infringement, pursuant to 35 U.S.C. § 283;

C. Enter judgment against Wal-Mart for infringement of the ‘776 Patent and permanently enjoin Wal-Mart, its principals, officers, directors, agents, employees, subsidiaries, affiliates and all other persons in active concert or participation with them, from further acts of infringement, pursuant to 35 U.S.C. § 283;

D. Enter judgment against Wal-Mart for infringement of the ‘213 Patent and permanently enjoin Wal-Mart, its principals, officers, directors, agents, employees, subsidiaries, affiliates and all other persons in active concert or participation with them, from further acts of infringement, pursuant to 35 U.S.C. § 283;

E. Enter judgment against Tristar for infringement of the ‘681 Patent and permanently enjoin Tristar, its principals, officers, directors, agents, employees, subsidiaries, affiliates and all other persons in active concert or participation with them, from further acts of infringement, pursuant to 35 U.S.C. § 283;

F. Enter judgment against Tristar for infringement of the ‘186 Patent and permanently enjoin Tristar, its principals, officers, directors, agents, employees, subsidiaries, affiliates and all other persons in active concert or participation with them, from further acts of infringement, pursuant to 35 U.S.C. § 283;

G. Enter judgment for Plaintiffs for an accounting as to all damages arising from Wal-Mart’s infringement of the ‘941 Patent;

H. Enter judgment against Wal-Mart for damages arising from the infringement of the ‘941 Patent, pursuant to 35 U.S.C. § 284;



I. Enter judgment for Plaintiffs for an accounting as to all damages arising from Wal-Mart's infringement of the '942 Patent;

J. Enter judgment against Wal-Mart for damages arising from the infringement of the '942 Patent, pursuant to 35 U.S.C. § 284;

K. Enter judgment for Plaintiffs for an accounting as to all damages arising from Wal-Mart's infringement of the '776 Patent;

L. Enter judgment against Wal-Mart for damages arising from the infringement of the '776 Patent, pursuant to 35 U.S.C. § 284;

M. Enter judgment for Plaintiffs for an accounting as to all damages arising from Wal-Mart's infringement of the '213 Patent;

N. Enter judgment against Wal-Mart for damages arising from the infringement of the '213 Patent, pursuant to 35 U.S.C. § 284;

O. Enter judgment for Plaintiffs for an accounting as to all damages arising from Wal-Mart's infringement of the '681 Patent;

P. Enter judgment against Wal-Mart for damages arising from the infringement of the '681 Patent, pursuant to 35 U.S.C. § 284;

Q. Enter judgment against Wal-Mart for damages in the form of all of Wal-Mart's profits arising from the infringement of the '681 Patent, pursuant to 35 U.S.C. § 289;

R. Enter judgment for Plaintiffs for an accounting as to all damages arising from Wal-Mart's infringement of the '186 Patent;

S. Enter judgment against Wal-Mart for damages arising from the infringement of the '186 Patent, pursuant to 35 U.S.C. § 284;

T. Enter judgment against Wal-Mart for damages in the form of all of Wal-Mart's profits arising from the infringement of the '186 Patent, pursuant to 35 U.S.C. § 289;

U. Enter judgment that this case is exceptional, and award treble damages, attorney fees and costs incurred in connection therewith, pursuant to 35 U.S.C. § 285; and

V. Enter judgment granting Plaintiffs such other relief as this Court deems appropriate.

Dated: April 3, 2015

Respectfully submitted,

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