IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TYCO HEALTHCARE RETAIL GROUP, INC. AND PARAGON TRADE BRANDS, INC.,

Plaintiffs,

v.

KIMBERLY-CLARK CORPORATION,

Defendant.

Civil Action No.: 03 C 0156 C

FIRST AMENDED COMPLAINT

For their First Amended Complaint, the plaintiffs allege as follows:

The Parties

1. The plaintiff, Tyco Healthcare Retail Group, Inc. ("Tyco Healthcare"), is a corporation organized under the laws of the State of Delaware with its principal place of business in King of Prussia, Pennsylvania.

2. The plaintiff, Paragon Trade Brands, Inc. ("Paragon"), is a corporation organized under the laws of the State of Delaware with its principal place of business in King of Prussia, Pennsylvania.

3. Upon information and belief, the defendant, Kimberly-Clark Corporation ("KC"), is a corporation organized under the laws of the State of Delaware with a place of business in Neenah, Wisconsin.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction under the Sherman Act, 15 U.S.C. §§ 1, 2, 15, 25 and 26, and the laws of the United States governing actions related to patents and declaratory judgments, 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

5. This Court has subject matter jurisdiction over Counts I through III of the Complaint pursuant to the Sherman Act, 15 U.S.C. §§ 1, 2, 15, 25 and 26, and 28 U.S.C. § 1331.

6. This Court has subject matter jurisdiction over Count IV of the Complaint pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, the patent laws of the United States and/or 28 U.S.C. § 1367.

7. This Court has supplemental subject matter jurisdiction over Counts V - VIII of this Complaint pursuant to 28 U.S.C. § 1367.

8. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400(b).

The Enloe Patents

9. KC claims that it is the owner of United States Patent Nos. 4,704,116, 4,846,823, 5,413,570, 5,415,644 and 5,599,338, any U.S. continuations, continuations-in-part, divisionals, extensions, reissues and reexaminations thereof, and any U.S. patents issued pursuant to U.S. Patent Application Serial No. 437,358 dated 05/09/1995 and/or any U.S. continuations, divisionals, continuations-in-part, extensions, reissues and reexaminations of the Serial No. 437,358 application and any counterpart applications and patents issued in Canada (collectively "the Enloe Patents"). The Enloe Patents generally relate to diapers.

The Relevant Market

10. Upon information and belief, KC manufactures and sells in interstate commerce infant disposable diapers and absorbent pants.

11. Upon information and belief, and at all relevant times, KC has been a market leader in the sales of infant disposable diapers and absorbent pants in the United States.

12. At all relevant times, KC and Tyco Healthcare have been competitors in the same relevant product and geographic markets.

13. At all relevant times, Paragon also has been a competitor of KC in the same relevant market.

14. The relevant product market is infant disposable diapers and absorbent pants.

15. Infant disposable diapers and absorbent pants are reasonably interchangeable by consumers for the same purpose regardless of manufacturer of such products and the cross-elasticity of demand for such products from different manufacturers is positive.

16. As compared to infant disposable diapers and absorbent pants from such manufacturers, no other products are reasonable substitutes.

17. The relevant geographic market is the United States.

18. Upon information and belief, the infant disposable diapers and absorbent pants market is a $4.0 billion market in the United States in terms of annual sales.

19. Upon information and belief, since at least 1998, KC has had at least a 40% share of the relevant product and geographic markets (hereinafter "the Relevant Market") in terms of annual sales. Advertising Age, a highly respected trade publication, has reported that KC's share of the infant disposable diapers and absorbent pants in the United States for 2001 was 45.4% in terms of annual sales.

KC's Lawsuit Against Paragon and License Agreement

20. In 1995, KC filed a lawsuit against Paragon in the United States District Court, Northern District of Texas, Dallas Division (Civil Action 3:95-CV-2574-T, hereinafter "the KC-Paragon lawsuit"). In the KC-Paragon Lawsuit, KC accused Paragon of infringing the Enloe Patents.

21. In 1998, while the KC-Paragon lawsuit was still pending, Paragon filed a petition for bankruptcy protection in the United States Bankruptcy Court, Northern District of Georgia, Atlanta Division (Case No. 98-60390).

22. While in bankruptcy, to ensure its survival as an ongoing entity, Paragon had no choice but to enter into settlement negotiations with KC that culminated in a License Agreement ("License Agreement") that was heavily in favor of KC. KC had superior bargaining power over bankrupt Paragon. KC was a market leader and had an arsenal of patents that it used as leverage against Paragon. KC further asserted that virtually every product that Paragon made infringed one or more of the Enloe Patents. For example, to get the license for the Enloe Patents, Paragon had to agree to both: (1) a percentage royalty for any of its products that came within the scope of the Enloe Patents; and (2) a minimum annual royalty of $5 million even if Paragon did not make, use or sell a single diaper product covered by the Enloe Patents. Paragon had to further

"admit" that all of the products KC accused of infringement "infringed" a "valid claim" of the Enloe Patents.

23. Paragon and KC entered into the License Agreement, a copy of which is attached at Exhibit A, on March 15, 1999. Under the License Agreement, KC purported to license Paragon under the Enloe Patents so that Paragon could make, use, and sell diaper products covered by the Enloe Patents in the United States and Canada.

24. In May 1999, shortly after Paragon entered into the License Agreement, KC allowed U.S. Patent No. 5,413,570 ("the '570 patent") and U.S. Patent No. 5,415,644 ("the '644 patent") to lapse for non-payment of maintenance fees.

KC's Lawsuit Against Tyco Healthcare

25. In 1998, KC filed a lawsuit against Tyco International (US), Inc. and Tyco Healthcare's predecessors (The Kendall Company, Inbrand Corporation, and ConFab, Inc., hereinafter also referred to collectively as "Tyco Healthcare") in the United States District Court, Western District of Wisconsin (Civil Action No. 98-C-756-C, hereinafter the "KC-Tyco Lawsuit"). In the KC-Tyco Lawsuit, KC accused Tyco Healthcare of infringing the Enloe Patents.

26. On November 1, 1999, Judge Crabb entered an order construing the claims of the Enloe Patents in the KC-Tyco Lawsuit.

27. Based on Judge Crabb's order, KC admitted that none of Tyco Healthcare's infant disposable diapers or absorbent pants infringed any of the Enloe Patents.

28. On November 3, 1999, Judge Crabb entered a judgment of non-infringement in favor of Tyco Healthcare and against KC.

29. KC appealed Judge Crabb's order and judgment in the KC-Tyco Lawsuit to the United States Court of Appeals for the Federal Circuit (Case No. 00-1080).

30. On February 20, 2001, the Federal Circuit affirmed Judge Crabb's claim constructions and entry of judgment of non-infringement in favor of Tyco Healthcare and against KC.

The KC-Paragon Arbitration

31. On April 27, 2001, based upon the Federal Circuit's ruling and claim construction in favor of Tyco Healthcare, Paragon initiated arbitration against KC under Article VI of the License Agreement (hereinafter "the KC-Paragon Arbitration"). In the KC-Paragon Arbitration, Paragon sought a ruling that its diaper products did not infringe the Enloe Patents under the Federal Circuit's claim construction, and therefore Paragon should be excused from payment of the percentage royalties under Paragraphs 4.01 and 1.09 of the License Agreement.

32. On November 1, 2001, Paragon and KC entered into a second settlement agreement, a copy of which is attached at Exhibit B (hereinafter the "Second Settlement Agreement"), resolving the issues related to Paragon's obligation to pay percentage royalties under the License Agreement.

33. Under the Second Settlement Agreement, KC acknowledged that none of Paragon's diaper products infringed the Enloe Patents. KC further acknowledged that Paragon was excused from paying any percentage royalties under the License Agreement, unless Paragon changed its diaper products to be within the scope of the Enloe Patents as defined by Judge Crabb in the KC-Tyco lawsuit.

34. Under the Second Settlement Agreement, however, KC refused to repay Paragon for Paragon's prior royalty payments under the License Agreement that Paragon made after Judge Crabb's ruling of November 3, 1999. The Second Settlement Agreement further provided that nothing in the Second Settlement Agreement affected any other provisions of the License Agreement, including the $5 million annual minimum royalty provision or any of the express warranties or representations provisions.

35. At the time Paragon entered into the Second Settlement Agreement, KC knew that it had allowed the '570 patent and the '644 patent to lapse for non-payment of maintenance fees. Yet, KC represented and warranted to Paragon in the Second Settlement Agreement that KC had "no firm knowledge" of any "failure of performance" under the License Agreement.

Tyco Healthcare Acquires Paragon's Stock

36. On November 29, 2001, Paragon sought KC's consent to assign the License Agreement and the Second Settlement Agreement to Tyco Healthcare.

37. KC consented to the assignment of the License Agreement and the Second Settlement Agreement from Paragon to Tyco Healthcare.

38. The Assignment of the License Agreement and Second Settlement Agreement to Tyco Healthcare, however, never took place. Rather, Tyco Healthcare purchased all of Paragon's stock in January 2002 and Paragon continued doing business under its own corporate identity.

KC's Predatory and Exclusionary Conduct and Patent Misuse

39. As a result of the acquisition of Paragon's stock by Tyco Healthcare, KC asserted that the minimum annual royalty of $5 million under the License Agreement was now due and payable to KC from Tyco Healthcare, Tyco International Services AG and Tyco International (US) Inc. (collectively, "the Tyco Companies"). KC further demanded that the minimum annual royalty of $5 million be increased, under Article IX of the License Agreement, by an amount equal to a certain percentage of the total size of the Tyco Companies' "existing business diaper sales." In effect, KC was now demanding additional royalties from the Tyco Companies based on a percentage of all sales of infant disposable diapers by the Tyco Companies (excluding Paragon) (hereinafter, the "additional royalties"). KC made this demand even though none of the Tyco Companies' infant disposable diapers were covered by any claim of the Enloe Patents.

40. On May 30, 2002, the Tyco Companies paid KC the quarterly minimum royalty due under the License Agreement ($1.25 million).

41. On August 19, 2002, KC attempted to enforce Article IX of the License Agreement. KC claimed that the additional royalties were triggered when Tyco Healthcare acquired Paragon's stock and thereby "combined" with Paragon.

42. Accordingly, KC demanded that the Tyco Companies pay additional royalties under Article IX of the License Agreement for all sales by the Tyco Companies of their own diaper products. KC made the demand knowing that none of the Tyco Companies' infant

disposable diapers and absorbent pants infringed the Enloe Patents. As KC was aware, Judge Crabb in the KC-Tyco Lawsuit, as affirmed by the Federal Circuit, had ruled in favor of the Tyco Companies and against KC, finding that none of the products of the Tyco Companies infringed the Enloe Patents.

43. On August 29, 2002, the Tyco Companies paid KC another quarterly minimum royalty due under the License Agreement ($1.25 million).

44. On September 19, 2002, the Tyco Companies rejected KC's demand for additional royalties. The Tyco Companies asserted that the additional royalties provision of the License Agreement had not been triggered for two reasons. First, there had been no assignment of the License Agreement from Paragon to Tyco Healthcare. Rather, Tyco Healthcare purchased Paragon's stock but Paragon did not assign the License and continued doing business under its own corporate identity. Second, even if there had been an assignment by Tyco Healthcare, Tyco Healthcare's diaper products did not infringe the Enloe Patents, as determined by Judge Crabb in the KC-Tyco Lawsuit and affirmed by the Federal Circuit.

45. The Tyco Companies warned KC that any attempt to extend the License Agreement and therefore the Enloe Patents to non-infringing products would constitute patent misuse.

46. Undaunted, on October 4, 2002, KC persisted in its attempts to extend the Enloe Patents to cover non-infringing products and again made a demand of the Tyco Companies for additional royalties under the License Agreement.

47. On December 4, 2002, the Tyco Companies informed KC that the License Agreement was not enforceable given KC's patent misuse in attempting to collect royalties on infant disposable diapers that did not infringe the Enloe Patents. The Tyco Companies further informed KC that no more payments of the minimum royalty purportedly due under the License Agreement would be made.

48. On December 10, 2002, KC objected to the Tyco Companies' refusal to make any more payments of the minimum royalty.

The Sham Arbitration Demand

49. On January 8, 2003, KC made a written demand on Tyco International (US) Inc. to arbitrate the alleged dispute over the additional royalties. In that demand, KC purported to select one of the three arbitrators called for in Article VI of the License Agreement.

50. Upon information and belief, KC purposefully and willfully did not make any arbitration demand on Paragon.

51. Under Articles VI and XII of the License Agreement, KC was required to make the demand for arbitration on Paragon at 180 Technology Parkway, Norcross, Georgia 30092.

52. However, upon information and belief, KC knew that Paragon was not subject to personal jurisdiction in Wisconsin.

53. Upon information and belief, KC made the demand for arbitration on Tyco International (US) Inc. knowing that the issue of whether additional royalties were due under Article IX of the License Agreement was not arbitrable.

54. KC knew that Article VI of the License Agreement expressly limited arbitration "to the question of whether or not a given Infant Disposable Diaper or Absorbent Pant is subject to payment of a ***percentage royalty*** under the terms of this Agreement" (emphasis added).

55. KC further knew that "percentage royalty" was defined in Paragraph 4.01 of the License Agreement in terms of "Net Sales."

56. KC further knew that Paragraph 1.09 of the License Agreement defined "Net Sales" as sales of infant disposable diapers or absorbent pants made, used or sold by Paragon which "but for this license, would infringe" the Enloe Patents.

57. KC further knew that the percentage royalty was separate and apart from the minimum annual royalty and from the additional royalties. The percentage royalty was defined and governed by Paragraphs 4.01(a) and (b) and 1.09 of the License Agreement. The minimum annual royalty was defined and governed by Paragraph 4.02 of the License Agreement. The additional royalties were defined and governed by Paragraph 9.02 of the License Agreement.

58. On February 20, 2003, the Tyco Companies rejected KC's demand for arbitration because the License Agreement clearly and unequivocally limited arbitration to the sole issue of

"whether or not a given Infant Disposable Diaper or Absorbent Pant is subject to payment of a ***percentage royalty*** under the terms of this Agreement."

59. On March 6, 2003, KC informed the Tyco Companies that KC had designated JAMS/Endispute to select the second arbitrator called for in the License Agreement, given "Tyco's failure to select an arbitrator within 45 days of the demand for Arbitration." As of March 6, 2003, KC still had not made any demand for arbitration on Paragon.

60. On March 12, 2003, the Tyco Companies informed KC that "Tyco will not participate in the arbitration proceeding" given that the dispute over additional royalties was clearly not arbitrable under the License Agreement.

61. On March 17, 2003, KC petitioned the Circuit Court of Winnebago County, Wisconsin to compel Tyco International (US) Inc. and Tyco Healthcare to arbitrate the dispute over additional royalties allegedly due under the License Agreement.

62. As of March 17, 2003, KC still had not made any demands for arbitration on Paragon.

Count I – Attempted Monopoly

63. Plaintiff, Tyco Healthcare realleges and incorporates by reference the allegations of paragraphs 1 to 62 above.

64. This Count arises under Section 2 of the Sherman Act, 15 U.S.C. § 2.

65. As described above, KC has engaged in predatory and exclusionary conduct by knowingly and willfully demanding royalties on and attempting to enforce the Enloe Patents against non-infringing infant disposable diaper products sold by Tyco Healthcare. Through its predatory and exclusionary conduct, KC is attempting to unlawfully expand the scope of the Enloe Patents.

66. As further described above, KC has engaged in predatory and exclusionary conduct by requiring Paragon (and now Tyco Healthcare) to pay a minimum annual royalty of $5 million even though KC knew that Paragon (and Tyco Healthcare) had made, used and sold no infringing infant disposable diapers or absorbent pants. Through its predatory and exclusionary conduct, KC has unlawfully expanded the scope of the Enloe Patents. KC has further engaged in

predatory and exclusionary conduct by attempting to restrain trade in seeking to penalize and discourage any company or business that had an existing infant disposable diaper business from acquiring or combining in any form with Paragon.

67. KC has further engaged in predatory and exclusionary conduct by making an objectively baseless demand for arbitration upon the Tyco Companies but not on Paragon, knowing that the issue of additional royalties was not arbitrable under the License Agreement. Upon information and belief, KC made this demand with the intent to improperly increase the costs of doing business for its competitors and to unlawfully expand the scope of the Enloe Patents.

68. KC's predatory and exclusionary conduct further includes the following: (1) it used the legal process of the State of Wisconsin to attempt to enforce payment of both the minimum annual royalty of $5 million and the additional royalties against the Tyco Companies, even though none of the Tyco Companies' products ever infringed the Enloe Patents; and (2) it filed an objectively baseless petition in the Circuit Court of Winnebago County, Wisconsin seeking to compel Tyco International (US) Inc. and Tyco Healthcare, but not Paragon, to arbitrate a claim for additional royalties knowing that the claim was not arbitrable under the License Agreement. Upon information and belief, KC filed the petition with the intent to improperly increase the costs of doing business for its competitors and to unlawfully expand the scope of the Enloe Patents.

69. KC has engaged in predatory and exclusionary conduct by using procedural maneuvering to select all three of the arbitrators called for in the License Agreement. Upon information and belief, KC purposefully failed to make a demand for arbitration on Paragon, choosing instead to make a demand for arbitration on non-parties to the License Agreement and on an issue that was not arbitrable under the License Agreement.

70. Upon information and belief, KC knew that the Tyco Companies would rightfully reject KC's demand for arbitration of a non-arbitrable issue and thereby enable KC to select a biased arbitration panel on the chimerical basis that "Tyco" had waived its right to choose an arbitrator.

71. On May 7, 2003, KC filed a motion in the arbitration proceeding to add Tyco Healthcare and Paragon as parties to the proceeding, even though (i) neither Tyco Healthcare nor Paragon had received a demand for arbitration pursuant to the terms of the License Agreement; (ii) neither Tyco Healthcare nor Paragon had participated in selecting the arbitration panel; (iii) there was and is no provision in the Commercial Arbitration Rules for addition of parties who have not received written demand and notice; and (iv) despite KC's position in the Winnebago County Circuit Court that Paragon no longer existed as a separate legal entity.

72. Upon information and belief, in engaging in predatory and exclusionary conduct including but not limited to the conduct described above, KC had a specific intent to achieve monopoly power in the Relevant Market.

73. KC's conduct in (i) forcing Paragon through unequal bargaining power to enter into a one-sided licensing agreement heavily in favor of KC, while Paragon was in bankruptcy and fighting for survival; (ii) requiring Paragon (and now Tyco Healthcare) to pay a minimum annual royalty of $5 million even though none of Paragon's (or Tyco Healthcare's) products infringe the Enloe patents; (iii) making objectively unreasonable demands on the Tyco Companies, purportedly under the License Agreement, for payment of additional royalties on the sales of non-infringing products; (iv) making objectively unreasonable demands for arbitration, purportedly under the License Agreement, as to non-arbitrable issues and only against non-parties to the License Agreement; and (v) filing an objectively unreasonable petition to compel arbitration against non-parties with respect to non-arbitrable issues, has had an immediate and long term chilling effect on Tyco Healthcare's and Paragon's efforts to fairly compete in the Relevant Market.

74. Given KC's 40-45% market share of the Relevant Market and its egregious misuse of the Enloe Patents, there is a dangerous probability that KC will achieve its goal of monopoly power in the Relevant Market.

75. KC's predatory and exclusionary conduct occurred in and affected interstate commerce.

76. KC's predatory and exclusionary conduct has injured competition in the Relevant Market.

77. Tyco Healthcare has been injured in its business as a result of KC's predatory and exclusionary conduct.

Count II – Illegal Contract, Combination or Conspiracy in Restraint of Trade

78. Plaintiff Tyco Healthcare realleges and incorporates by reference the allegations of paragraphs 1 to 77 above.

79. This Count arises under Section 1 of the Sherman Act, 15 U.S.C. § 1.

80. The License Agreement, as KC is attempting to enforce it against Tyco Healthcare and/or Paragon, is an illegal contract that unreasonably restrains trade and commerce among the several states in an area of commerce not covered by the Enloe Patents. The minimum annual royalty of $5 million on non-infringing sales plus the additional royalties based on Tyco Healthcare's existing diaper business harm competition and consumers by raising the price of goods and the costs of doing business in the Relevant Market. It further restricts the ability of Tyco Healthcare and/or Paragon to compete in the Relevant Market.

81. KC's attempt to enforce the License Agreement against Tyco Healthcare and/or Paragon to collect the minimum annual royalty plus the additional royalties on sales of non-infringing products by Tyco Healthcare occurred in and affected interstate commerce.

82. KC's conduct has injured competition in the Relevant Market.

83. As a result of KC's predatory and exclusionary conduct and attempts to enforce the License Agreement to require payment of royalties on non-infringing products, Tyco Healthcare has been injured in its business.

Count III – Illegal Contract, Combination or Conspiracy in Restraint of Trade

84. Plaintiff Paragon realleges and incorporates by reference the allegations of paragraphs 1 to 76 and 80 through 82, above.

85. This Count arises under Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§1 and 2.

86. KC's predatory and exclusionary conduct as described above has occurred in and affected interstate commerce, has injured competition in the Relevant Market, was and is made with the intent to monopolize the Relevant Market and injure competitors, and has a dangerous probability of success.

87. Paragon has been injured in its business as a result of KC's predatory and exclusionary conduct and attempts to monopolize the Relevant Market and illegally restrain trade in commerce.

Count IV – Unenforceability of License Agreement

88. The Plaintiffs Tyco Healthcare and Paragon reallege and incorporate by reference the allegations of paragraphs 1 to 87 above.

89. This Count arises under the patent laws of the United States and the Declaratory Judgment Act.

90. Through its assertions and efforts to collect license fees under the License Agreement for infant disposable diaper products not covered by the Enloe Patents, KC has misused the Enloe Patents rendering the Enloe Patents unenforceable.

91. As a result of the unenforceability of the Enloe Patents, the License Agreement is void.

Count V – Absence of Liability Under the License Agreement

92. The Plaintiffs Tyco Healthcare and Paragon reallege and incorporate by reference the allegations of paragraphs 1 to 91 above.

93. The License Agreement is binding upon and inures to the benefit of successors and assigns of all or substantially all of Paragon's infant disposable diaper business.

94. KC has asserted that Tyco Healthcare is a successor and/or assign of Paragon's infant disposable diaper business under Paragraph 9.01 of the License Agreement. As a result, KC has asserted that it is entitled to additional royalties under Paragraph 9.02(b) of the License Agreement.

95. Tyco Healthcare was not a party to or a signatory of the License Agreement.

96. The License Agreement was never assigned to Tyco Healthcare by Paragon.

97. Tyco Healthcare is not a successor and/or an assignee of all or substantially all of Paragon's infant disposable diaper business or absorbent pant business pursuant to Paragraph 9.01 of the License Agreement.

98. Tyco Healthcare is not a "combination" with Paragon as referenced in Paragraph 9.02 of the License Agreement.

99. Neither Tyco Healthcare nor Paragon owes KC any additional royalties under Paragraph 9.02(b) of the License Agreement.

Count VI – Failure of Consideration

100. The Plaintiffs Tyco Healthcare and Paragon reallege and incorporate by reference the allegations in paragraphs 1 to 99 above.

101. By entering the License Agreement, KC represented that the issued Enloe Patents were valid and enforceable.

102. At the time of the Second Settlement Agreement, KC had allowed the '570 patent and the '644 patent to lapse for non-payment of maintenance fees. Even though KC knew this, it represented and warranted that it had "no firm knowledge" of any "failure of performance" under the License Agreement.

103. KC's continued licensing of the '570 and '644 patents after they had lapsed was a failure of consideration for that License Agreement, which voids the License Agreement.

Count VII - Breach of Warranty

104. The Plaintiffs Tyco Healthcare and Paragon reallege and incorporate by reference the allegations in paragraphs 1 to 103 above.

105. By continuing to license the '570 and '644 patents to Paragon after those patents had lapsed and by representing and warranting to Paragon that KC had "no firm knowledge" of any "failure of performance" under the License Agreement, KC breached the implied warranty that all the Enloe Patents were in force and effect as of the time the Second Settlement Agreement was entered.

106. In the License Agreement, KC expressly warranted, "LICENSOR has good and complete title in and to (or beneficial interest to) the Enloe Patents and has the right to license

them to LICENSEE in accordance with the terms of this Agreement." (Article XI(b).) By continuing to license the '570 and '644 patents to Paragon after those patents had lapsed and making false representations and warranties about the License Agreement, KC breached the foregoing express warranty.

107. KC's breach of express and implied warranties voids the License Agreement.

Count VIII – Frustration of Purpose

108. The Plaintiffs Tyco Healthcare and Paragon reallege and incorporate by reference the allegations in paragraphs 1 to 107 above.

109. The License Agreement was entered into as part of a settlement of the KC-Paragon Lawsuit.

110. In the KC-Paragon Lawsuit, KC contended that one or more of the Enloe Patents was infringed by Paragon's diapers with flaps.

111. In the KC-Paragon Lawsuit, KC contended that the Enloe Patents covered flaps that were fluid pervious or fluid impervious. Paragon's diaper flaps were fluid impervious.

112. Paragon settled the KC-Paragon Lawsuit and entered the License Agreement for the purpose of avoiding a finding of infringement based on KC's asserted contention as to the scope of the Enloe Patents.

113. A basic assumption of the License Agreement was the Enloe Patents had considerable value to Paragon in that they covered the Paragon diaper product line.

114. KC brought suit against the Tyco Companies in the KC-Tyco Lawsuit. As a result of this Court's ruling in the KC-Tyco Lawsuit, and KC's unsuccessful appeal to the Federal Circuit, the Enloe Patents asserted in that case were limited to covering only fluid pervious flaps and "fluid pervious" meant that fluid flowed through the flaps without pressure.

115. Paragon was not a party to the KC-Tyco Lawsuit, and Paragon took no action that resulted in any of the Court's decisions in the KC-Tyco Lawsuit.

116. As a result of the ruling in the KC-Tyco Lawsuit, the License Agreement meant that Paragon was required to pay substantial sums of a royalty for a license for the Enloe Patents, which, as a matter of law, did not cover Paragon's products and which covered virtually nothing.

117. As a result of the ruling in the KC-Tyco Lawsuit, the Enloe Patents are valueless.

118. The plaintiffs are excused from performance under the License Agreement as a result of the frustration of purpose due to the rulings in the KC-Tyco Lawsuit.

WHEREFORE, the plaintiffs pray for relief as follows:

a. That the Court enter judgment against KC and in favor of the plaintiffs;

b. That the Court declare the Enloe Patents unenforceable;

c. That the Court declare the License Agreement void because of the unenforceability of the Enloe Patents;

d. That the Court declare that Tyco Healthcare is not a successor or assign under Paragraph 9.01 of the License Agreement;

e. That the Court declare that neither Tyco Healthcare nor Paragon are required to pay an increased minimum annual royalty under Paragraph 9.02(b) of the License Agreement;

f. That the Court declare the License Agreement void for failure of consideration;

g. That the Court declare the License Agreement void for breach of implied warranty;

h. That the Court declare the plaintiffs are excused from performance under the License Agreement because of frustration of purpose;

i. That the plaintiff be awarded damages sufficient to compensate it for its injuries;

j. That the Court order KC to repay all payments that the plaintiffs made pursuant to the License Agreement;

k. That the Court enjoin KC from further attempts to enforce its Enloe Patents against the plaintiffs and from any other acts of attempted monopolization;

l. That the plaintiffs be awarded damages sufficient to compensate them for injuries which they have incurred as a result of KC's attempt to monopolize the Relevant Market and illegally restrain trade;

m. That the Court treble the amount of damages cause by KC's attempt to monopolize the Relevant Market and illegally restrain trade;

n. That the case be declared an exceptional case pursuant to 35 USC § 285;

o. That the plaintiffs be awarded their costs and reasonable attorneys' fees arising from this action; and

p. That the Court grants such other and further relief as it deems just and proper.

Dated at Madison, Wisconsin this ____ day of ________, 2003.

REINHART BOERNER VAN DEUREN s.c.

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EXHIBIT A

LICENSE AGREEMENT

BETWEEN

KIMBERLY-CLARK CORPORATION

AND

PARAGON TRADE BRANDS, INC.

LICENSE AGREEMENT

This License Agreement is made and entered into as of this 15th day of March, 1999, between Kimberly-Clark Corporation, a Delaware corporation having offices at 351 Phelps Drive, Irving, Texas 75038 ("LICENSOR") and Paragon Trade Brands, Inc., a Delaware Corporation having a principal place of business at 180 Technology Parkway, Norcross, Georgia 30092 (including any entity which it controls or as to which it is under common control, "LICENSEE").

WITNESSETH

WHEREAS, LICENSEE has requested a license from LICENSOR under certain patents in order to manufacture disposable absorbent products with containment flaps; and

WHEREAS, the parties desire to enter into this License Agreement under the terms and conditions hereinafter recited.

NOW THEREFORE, it is agreed as follows:

ARTICLE I
DEFINITIONS

As used throughout this Agreement, each term shall have the meaning set forth in this Article I:

1.01 "Absorbent Pant(s)" shall mean absorbent articles which are intended to be pulled on to fit about the waist of the wearer, whether infant or child, and includes training pants.

1.02 "Calendar Year" shall mean the twelve (12) month period commencing on the Effective Date and ending on the last day of the twelfth month thereafter, and each subsequent twelve (12) month period thereafter.

1.03. "Conversion Date" shall mean the earlier of (a) August 1, 1999, if the Effective Date has not yet occurred; or (b) 90 days after the Court Order has been stayed or modified in any manner not approved by LICENSOR in writing, unless the Court Order has been reinstated or modified in a manner approved by LICENSOR in writing prior to the expiration of such 90 day period. In further clarification of the foregoing, no Conversion Date shall occur if the Court Order has been entered prior to August 1, 1999 and remains in full force and effect.

1.04 "Court Order" shall mean an order of the Bankruptcy Court in Bankruptcy Case No. 98-60390 (U.S. Bankruptcy Court, Northern District of Georgia, Atlanta Division) approving the Settlement Agreement between the LICENSEE and the LICENSOR.

1.05 "Dallas Litigation" shall mean the action captioned Kimberly-Clark Corporation v. Paragon Trade Brands, Inc., pending before the U.S. District Court, Northern District of Texas, Dallas Division (Civil Action 3:95-CV-2574-T).

1.06 "Effective Date" shall mean the first day of the month following the entry of the Court Order.

1.07 "Enloe Patents" shall mean U.S. Patent 4,704,116, U.S. Patent 4,846,823, U.S. Patent 5,413,570, U.S. Patent 5,415,644 and U.S. Patent 5,599,338 and/or any U.S. continuations, continuations-in-part, divisions, extensions, reissues and reexaminations thereof; and any U.S. patent issued pursuant to U.S. Patent Application Serial No. 437,358 dated 05/09/1995, and/or any U.S. continuations, divisions, continuations in-part, extensions, reissues, and reexaminations of the Serial No. 437,358 application; and any counterpart patent applications and patents issued in Canada.

1.08 "Infant Disposable Diaper(s)" shall mean absorbent articles which are intended to be manually fastened about an infant or a child and are not intended to be pulled on to fit about the waist of the wearer.

1.09 "Net Sales" shall mean the gross amount of sales invoiced to independent third parties by LICENSEE, less Reductions in Sales, for Infant Disposable Diapers or Absorbent Pants which (a) are made, used, or sold by LICENSEE and (b), but for this license, would infringe a Valid Claim in the place where such products are made, used or sold by LICENSEE. For the purpose of this Agreement, products which have been accused of infringement in the Dallas Litigation shall be deemed to infringe a Valid Claim. Net Sales for the purpose of calculating royalties hereunder shall reflect a selling price which results from a bona fide, arm's length transaction between LICENSEE and an independent, unrelated third party customer. If the selling price is reduced in light of other consideration from the buyer, or is a sale to a related third party, such selling price shall not be deemed a selling price derived from a bona fide, arm's length transaction, and a selling price for the same product resulting from a bona fide, arm's length transaction between LICENSEE and an independent, unrelated third party customer shall be substituted for purposes of calculating "Net Sales" under this Agreement, or, at LICENSOR's option, in the event the sale by LICENSEE is not to an independent third party, Net Sales shall be measured on the basis of the highest price in any of the succession of sales or other transfers of the applicable products until such products come into an independent third party's hands. "Net Sales" shall not include bulk sales of defective product not sold or resold for use as Infant Disposable Diapers or Absorbent Pants.

1.10 "Reductions in Sales" shall mean,

(a) transportation charges or allowances actually paid or granted;

(b) credits or allowances actually given or made on account of rejects, returns, or retroactive price reductions;

(c) any tax or other governmental charge directly on sale, transportation, use or delivery of products included in the invoice, paid by LICENSEE and not recovered from the purchaser; and

(d) rebates, discounts and broker commissions.

"Reductions in Sales" do not include (a) slotting fees or other payments made to a retailer to induce it to stock a manufacturer's product(s), or (b) any reimbursement, credit or payment for retailer advertising or retailer promotion expenses; and no deduction of such fees, payments, reimbursements or credits shall be made in calculating Net Sales.

1.11 "Safe Harbor Absorbent Pants" shall mean Absorbent Pants that:

(a) employ no superabsorbent material having an Absorbency Under Load value of 27 grams per gram or greater as described in and determined by the teachings of U.S. Patent B1 5,147, 343 issued March 17, 1998 to Kellenberger ("Kellenberger Patent"); and

(b) employ no superabsorbent material having a Pressure Absorbency Index of 100 or greater as described in and determined by the teachings of U.S. Patent 5, 601,542, issued February 11, 1997 to Melius ("Melius Patent"); and

(c) employ a liquid impermeable, vapor permeable film which has a basis weight of not less than 22 grams per square meter in any backsheet that employs a substantially liquid impermeable, vapor permeable film as a component of the backsheet; and

(d) employ a containment means ("ULG") as illustrated in the drawing attached hereto as Exhibit A and as described (substituting "training pant" for "diaper"), both as to physical structure and as to performance, in the letter attached hereto as Exhibit B; and

(e) which are otherwise of the same construction, configuration and formed from the same materials as the training pant attached hereto as Exhibit C.

1.12 "Safe Harbor Infant Disposable Diapers" shall mean Infant Disposable Diapers that:

(a) employ no superabsorbent material having an Absorbency Under Load value of 27 grams per gram or greater as described in and determined by the teachings of U.S. Patent B1 5,147, 343 issued March 17, 1998 to Kellenberger; and

(b) employ no superabsorbent material having a Pressure Absorbency Index of 100 or greater as described in and determined by the teachings of U.S. Patent 5, 601,542, issued February 11, 1997 to Melius; and

(c) employ a liquid impermeable, vapor permeable film which has a basis weight of not less than 22 grams per square meter in any backsheet that employs a substantially liquid impermeable, vapor permeable film as a component of the backsheet; and

(d) employ a containment means ("ULG") as illustrated in the drawing attached hereto as Exhibit A and as described, both as to physical structure and as to performance, in the letter attached hereto as Exhibit B; and

(e) which are otherwise of the same construction, configuration and formed from the same materials as the Infant Disposable Diaper attached hereto as Exhibit D.

1.13 "Settlement Agreement" shall mean the settlement agreement between LICENSEE and LICENSOR settling LICENSOR'S claims as defined therein.

1.14 "Territory" shall mean the United States of America, its territories and possessions and Canada, its territories and possessions.

1.15 "Valid Claim" shall mean a claim of an unexpired Enloe Patent which has not been found invalid or unenforceable by a U.S. or Canadian governmental tribunal or a U.S. or

Canadian court of competent jurisdiction in a decision from which no appeal has or may be taken.

ARTICLE II

LICENSE

2.01 License Grant: LICENSOR grants to LICENSEE, subject to the terms and conditions of this Agreement, a non-exclusive right and license under the Enloe Patents to make, have made, use and sell Infant Disposable Diapers and Absorbent Pants in the Territory. LICENSEE has no right to grant sublicenses under the Enloe Patents. The term for the license grant under this Section 2.01 shall commence on January 1, 1999 and, unless terminated in accordance with any other provision hereof, shall remain in full force and effect until the expiration of the last to expire of the Enloe Patents. No implied license is granted to LICENSEE other than under the Enloe Patents.

2.02 Covenant Not To Sue:

(a) So long as LICENSEE is in compliance with the material terms of this Agreement, LICENSOR covenants not to sue LICENSEE for infringement, if any, of the Enloe Patents arising from the manufacture, use or sale of Infant Disposable Diapers or Absorbent Pants by LICENSEE occurring on or after January 1, 1999.

(b) So long as LICENSEE is in compliance with the material terms of this Agreement, LICENSOR covenants not to sue LICENSEE for infringement, if any, of the Kellenberger Patent (as defined in Section 1.11(a)), the Melius Patent (as defined in Section 1.11(b)) or U.S. Patent 5,843,056 issued December 1, 1998 to Good ("Good Patent") or any counterpart patent issued in Canada to the Kellenberger Patent, Melius Patent or Good Patent, arising from the manufacture, use or sale by LICENSEE on or after January 1, 1999, of Infant Disposable Diapers which conform with Section 1.12(a), (b) and (c) or of Absorbent Pants which conform with Section 1.11(a), (b) and (c).

2.03 Conversion Date: The license and covenant not to sue set forth in Sections 2.01 and 2.02, respectively, shall, except with respect to products manufactured prior to the Conversion Date and sold pursuant to Article III and Section 4.05, terminate and be of no further force and effect on and after the Conversion Date.

ARTICLE III

CONVERSION DATE

On or before the Conversion Date, LICENSEE shall cease manufacture of any Infant Disposable Diapers and any Absorbent Pants which infringe a Valid Claim. LICENSOR may continue to sell Infant Disposable Diapers and Absorbent Pants manufactured prior to the Conversion Date subject to payment of the royalties set forth in Section 4.05.

ARTICLE IV

ROYALTIES

4.01 Royalties: Royalties shall be payable at different rates for different products.

(a) Infant Disposable Diapers

From the Effective Date through the term of this Agreement, LICENSEE shall pay LICENSOR a royalty of two and one-half percent (2.5%) for the first two hundred million dollars of Net Sales of Infant Disposable Diapers in each Calendar Year and shall pay LICENSOR a royalty of one and one-half percent (1.5%) of Net Sales of Infant Disposable Diapers in excess of two hundred million dollars in each Calendar Year if such royalties are paid voluntarily by LICENSEE provided, however, that for the term of this Agreement, royalties shall be payable at the higher rate of two and one-half percent (2.5%) as to any product design as to which LICENSOR is required to enforce its rights hereunder through litigation or arbitration; and provided further, however, that no percentage royalty under the Enloe Patents shall be due on Safe Harbor Infant Disposable Diapers.

(b) Absorbent Pants:

From the Effective Date through the term of this Agreement, LICENSEE shall pay LICENSOR a royalty of 5.0 percent (5.0%) of Net Sales of Absorbent Pants; provided, however, that no percentage royalty under the Enloe Patents shall be due on Safe Harbor Absorbent Pants.

4.02 Minimum Annual Royalty: In each Calendar Year during which this Agreement is in effect, LICENSEE shall pay to LICENSOR a minimum annual royalty for Infant Disposable Diapers of five million dollars ($5,000,000.00). Royalties on Infant Disposable Diapers paid pursuant to Section 4.01(a) shall count towards the minimum annual royalty.

4.03 One Royalty: Royalties shall be payable only once on each unit of product and shall accrue upon sale by LICENSEE.

4.04 Royalty Before Effective Date. Commencing as of January 1, 1999 and until the Effective Date, LICENSEE shall pay LICENSOR a royalty of two and one-half percent (2.5%) of Net Sales of Infant Disposable Diapers and a royalty of 5.0 percent (5.0%) of Net Sales of Absorbent Pants; provided, however, that no percentage royalty under the Enloe Patents shall be due on Safe Harbor Infant Disposable Diapers or Safe Harbor Absorbent Pants; and provided further that anything to the foregoing notwithstanding, the minimum payment to LICENSOR under this Section 4.04 with respect to the month of January, 1999 shall be $250,000, and with respect to any month thereafter shall not be less than $500,000.

4.05 Royalty After Conversion Date. Sales of product manufactured before the Conversion Date but sold after the Conversion Date will be subject to a royalty at the same rates as set forth in Section 4.04, which shall be calculated by applying such royalty rates to LICENSEE's inventory on hand as of the Conversion Date, except that the royalty payable under this Section 4.05 with respect to such inventory shall not be less than $500,000.

ARTICLE V
PAYMENT AND ACCOUNTING

5.01 Minimum Payments: Except as otherwise provided in Section 5.02, the minimum annual royalty for Infant Disposable Diapers set forth in Section 4.02 shall be paid by LICENSEE to LICENSOR in quarterly installments of one million two hundred-fifty thousand dollars ($1,250,000.00) on the last day of each quarter of the Calendar Year until such time as the minimum annual royalty for Infant Disposable Diapers for that Calendar Year has been paid to LICENSOR. The minimum payment of $500,000 per month under Sections 4.04 and 4.05 shall be paid on the 15th of each month, and any additional percentage royalties shall be paid on or before the 30th of the following month. The royalty payment under Section 4.05 shall be paid 15 days after the Conversion Date.

5.02 Ongoing Royalties and Accountings: Within sixty (60) days after the close of each quarter of the Calendar Year during the term of this Agreement, and within thirty (30) days after each month during the time prior to the Effective Date, LICENSEE shall render an accounting to

LICENSOR with respect to all royalty payments due under the provisions of Article IV. Such accounting shall be accompanied by payment from LICENSEE of the amounts by which the cumulative royalties due to the end of the period which is the subject of the accounting for Infant Disposable Diapers and Absorbent Pants, respectively, exceed the amount of royalties as to such products theretofore paid for such period. Such accounting shall indicate, for such period, the monetary amount of Net Sales with respect to which royalty payments are due. LICENSEE shall keep accurate records in sufficient detail to enable royalties to be determined and shall maintain such records at its principal place of business in the United States. Each such accounting shall be treated as confidential and proprietary information of Paragon to the extent the information therein is not substantially available elsewhere, and shall only be used for the purposes set forth herein, provided, however, that the dollar amount of the royalties paid or payable to LICENSOR hereunder shall not be deemed confidential. LICENSOR's in-house patent counsel shall maintain the confidentiality of each such accounting and the information contained therein, and shall only share such accounting and the information contained therein with such persons at LICENSOR or its outside counsel or auditors who need to know such information for purposes of verifying such accounting.

5.03 Royalties Upon Termination: Within sixty (60) days of the Conversion Date or of termination of this Agreement according to the provisions of Article VII or Article VIII, LICENSEE shall render an accounting to LICENSOR with respect to all royalty payments which it is obligated to pay under the provisions of Article IV and shall pay such royalties to LICENSEE. Such accounting shall be subject to the confidentiality treatment set forth in Section 5.02.

5.04 Audit: At LICENSOR's request and expense, LICENSEE shall permit an independent certified public accountant selected by LICENSOR, except one to whom there shall be some reasonable objection by LICENSEE, to have access, once in each Calendar Year during regular business hours and upon reasonable notice to LICENSEE, to such of the records of LICENSEE as may be necessary to verify the accuracy of the reports and payments made under this Agreement, but said accountant shall not disclose to LICENSOR any information except that which relates to the information which should properly have been contained in such reports as provided for in Sections 5.02 and 5.03. The right to review LICENSEE's records as to any given time period shall terminate two (2) years after LICENSOR's receipt of royalties in respect to such time periods.

5.05 Income Tax: Any income or other tax that LICENSEE is required to withhold and pay on behalf of LICENSOR with respect to the royalties payable to LICENSOR under the Agreement shall be deducted from said royalties prior to remittance to LICENSOR; provided, however, that in regard to any tax so deducted, LICENSEE shall give or cause to be given to LICENSOR such assistance as may reasonably be necessary to enable LICENSOR to claim exemption therefrom or credit therefor, and in each case shall furnish LICENSOR proper evidence of the taxes paid on its behalf. Notwithstanding the foregoing, LICENSEE shall not withhold any income or other tax, if LICENSOR provides its tax number to LICENSEE, unless a change in law requires withholding notwithstanding the furnishing of such number.

ARTICLE VI
ARBITRATION

Any dispute between LICENSOR and LICENSEE as to whether or not a given Infant Disposable Diaper or Absorbent Pant is subject to payment of a percentage royalty under the terms of this Agreement or the amount of any royalty hereunder shall be subject to mandatory binding arbitration by a panel of three arbitrators, one of which will be selected by each of LICENSOR and LICENSEE and the third of which shall be selected by the other two arbitrators. Any party which fails to select an arbitrator within 45 days of a written demand for arbitration hereunder shall be deemed to have waived its right to designate an arbitrator, and such arbitrator may be selected by such office of JAMS/Endispute or the American Arbitration Association as the other party shall designate. Any such arbitration shall be limited in scope to the question of whether or not a given Infant Disposable Diaper or Absorbent Pant is subject to payment of a percentage royalty under the terms of this Agreement (including the proper construction of the Valid Claim(s) of the Enloe Patent asserted to be infringed) or the required amount of such payment and shall not address any aspect or issue concerning the validity of any of the Enloe Patents, which validity shall be presumed. The party losing any such arbitration shall bear the costs of the three arbitrators, and, in the event the arbitrators conclude that the losing party was acting in bad faith, the winner's reasonable attorneys' fees, as determined by the arbitrators. The arbitration shall be conducted pursuant to such rules and proceedings as the parties shall agree at that time; in the event of any disagreement between the parties about the terms, conditions or timing of the arbitration, the arbitrators shall have the authority to resolve the dispute. The arbitration and any decision rendered shall be confidential to the parties and shall not be disclosed to third parties except to the extent required by law, by rules governing litigation, or by court order.

ARTICLE VII
EFFECTIVE DATE AND TERM

Except as otherwise provided herein, this Agreement will become effective on the day first written above, and, unless previously terminated in accordance with any of the provisions hereof, shall remain in effect until the last of the Enloe Patents to expire, except that the provisions of Section 2.02(b) shall remain in effect until the last of the Kellenberger Patent, Melius Patent and Good Patent and any counterpart patents issued in Canada has expired.

ARTICLE VIII
TERMINATION

8.01 Breach: Failure by LICENSEE or LICENSOR to comply with any of its obligations and covenants contained in this Agreement shall entitle the other party to give to the party in default a written notice requiring it to cure such default(s). If a default is not cured within thirty (30) days after receipt of notice, the notifying party shall be entitled, without prejudice to any other rights conferred by this Agreement or by law, to terminate this Agreement by giving written notice to take effect immediately. The right of each party to terminate this Agreement shall not be affected by waiver of, or failure to terminate for any previous default.

8.02 Insolvency: LICENSOR may, at its election, terminate this Agreement upon the bankruptcy or insolvency of LICENSEE. In such event, termination shall be deemed effective as of the date of LICENSEE's insolvency but in no event later than a time prior to LICENSEE's filing of a petition in bankruptcy. This Section 8.02 shall not apply to LICENSEE'S Chapter 11 Bankruptcy Case No. 98-60390 (United States Bankruptcy Court, Northern District of Georgia, Atlanta Division).

8.03 Survival: Termination of this Agreement under Section 8.01 or Section 8.02 shall not terminate the parties' obligations to one another for the period prior to termination. Without limiting the generality of the foregoing, the provisions of Article VI shall survive termination of this Agreement under Section 8.01 or Section 8.02, but the arbitration described in such Article shall be limited to Infant Disposable Diapers and Absorbent Pants manufactured, used or sold by LICENSEE prior to the date of termination.

ARTICLE IX
ASSIGNMENT

9.01 General: Subject to the provisions of this Article IX, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of all or substantially all of LICENSEE'S Infant Disposable Diaper business and the successors and assigns of all or substantially all of LICENSEE'S Absorbent Pants business; provided, however, that a successor or assign of only one of such Infant Disposable Diaper business or Absorbent Pants business shall have the benefit and burdens of this Agreement only with respect to such line of business. This Agreement shall not create a license for or otherwise apply to the activities of successors or assigns prior to the date of any such succession or assignment.

9.02 Existing Diaper Entities: Notwithstanding Section 9.01 hereof, in the event of assignment hereunder to or any combination of LICENSEE and an existing business which sells Infant Disposable Diapers, then (a) the phrase "two hundred million dollars" in Section 4.01(a) shall be increased by an amount equal to the sales by such existing business of Infant Disposable Diapers for the twelve months preceding the date of such assignment or combination ("Existing Business Diaper Sales"); (b) the figure $5,000,000 in Section 4.02 shall be increased by an amount equal to two and one half percent (2.5%) of Existing Business Diaper Sales; (c) the figure $1,250,000 in Section 5.01 shall be increased by an amount equal to five-eighths of one percent (0.625%) of Existing Business Diaper Sales; and (d) the royalty rate under Section 4.01(a) shall be two and one-half percent (2.5%) with respect to such amount of all annual sales by LICENSEE, in excess of the sum ("Combined Twelve Month Diaper Sales") of Existing Business Diaper Sales and the sales of Infant Disposable Diapers by LICENSEE in the twelve months preceding the date of such assignment or combination ("Prior LICENSEE Diaper Sales"), as shall equal the ratio (i) Existing Business Diaper Sales to (ii) Combined Twelve Month Diaper Sales (the amount of incremental sales so determined under this subsection 9.02(d), "Existing Business Attributable Diaper Increase").

9.03 Successive Combinations: In the event of more than one assignment or combination of LICENSEE and an existing business which sells Infant Disposable Diapers, then the provisions of Section 9.02 shall continue be applied to each such successive assignment and thereafter, except that (a) "Existing Business Diaper Sales" shall equal the sum of (i) all Existing Business Diaper Sales as previously determined under Section 9.02 (without regard to this Section 9.03), (ii) the Existing Business Attributable Diaper Increase for the twelve months preceding such successive assignment or combination (the sum of (i) and (ii), "Old Existing Business Diaper Sales"); and (iii) the sales of Infant Disposable Diapers by the existing business which is the subject of such successive assignment or combination for the twelve months preceding such successive assignment or combination; and (b) "Prior LICENSEE Diaper Sales" shall equal the sales by LICENSEE for the twelve months preceding such successive assignment or combination, less Old Existing Business Diaper Sales.

9.04 Consent to Assignment: The license grant hereunder shall be personal to Paragon and shall be nontransferable and nonassignable to third parties without the prior written consent of K-C, which consent K-C shall not unreasonably withhold or unreasonably delay. It shall not be unreasonable for K-C to withhold or delay its consent if the effect of the proposed transfer or assignment would be to allow a transferee or assignee to obtain the prospective right to make, import, use, offer for sale or sell Infant Disposable Diapers or Absorbent Pants in the Territory without entering into a mutually agreeable settlement agreement with K-C for any past infringing activity by the transferee or assignee with respect to the K-C patents identified in this License Agreement. In addition, the license grant hereunder shall not apply to the manufacture, import, use or sale of Infant Disposable Diapers or Absorbent Pants by any other business entity acquired by Paragon, by which Paragon is acquired, merged with Paragon, consolidated with Paragon, partnered with Paragon or in any other business arrangement with Paragon after the effective date of this Settlement Agreement without the prior written consent of K-C, which consent K-C shall not unreasonably withhold or unreasonably delay. It shall not be unreasonable for K-C to withhold or delay its consent if the effect of the proposed transaction would be to allow an acquiring, merging or consolidating entity or partner to obtain the prospective right to make, import, use, offer for sale or sell Infant Disposable Diapers or Absorbent Pants in the Territory without entering into a mutually agreeable settlement agreement with K-C for any past infringing activity by the acquiring, merging or consolidating entity or partner with respect to the K-C patents identified in this License Agreement.

ARTICLE X
GOVERNING LAW

This Agreement shall be construed and all questions relating hereto shall be determined in accordance with the laws of the State of Delaware.

ARTICLE XI
REPRESENTATIONS AND WARRANTIES; LIMITATIONS

11.01 Representations and Warranties of Licensor: LICENSOR hereby represents and warrants the following:

(a) LICENSOR has the full right, power and authority to enter into this Agreement and perform in accordance with its terms.

(b) LICENSOR has good and complete title in and to (or beneficial interest to) the Enloe Patents and has the right to license them to LICENSEE in accordance with the terms of this Agreement.

(c) LICENSOR has good and complete title in and to (or beneficial interest to) the Kellenberger Patent, Mellus Patent and Good Patent (including any Canadian counterpart patents) and has the right to grant a covenant not to sue LICENSEE in accordance with the terms of Section 2.02(b) of this Agreement.

11.02 Representation and Warranties of Licensee:

(a) LICENSEE has the full right, power and authority to enter into this Agreement and perform in accordance with its terms.

(b) LICENSEE has no knowledge of any existing or contingent impediment, including the effect of its pending bankruptcy proceeding or any lack of liquidity, to its performing in accordance with the terms of this Agreement.

11.03 Limitations:

(a) Except as set forth above, neither party has made, or intends to make, any express or implied warranty to the other. In particular, LICENSOR has made no express or implied warranty in this Agreement that LICENSEE's making, using, or selling of products will not infringe another patent held by LICENSOR or held by a third party.

(b) Nothing in this Agreement shall be construed as granting by implication, estoppel, or otherwise, any licenses or rights under patents of LICENSOR other than the Enloe Patents.

ARTICLE XII

NOTICES

Any notice required or permitted to be given under this Agreement by one of the parties to the other shall be in writing and shall be deemed to have been sufficiently given for all purposes hereunder if personally delivered or mailed by registered or certified mail, postage prepaid, addressed to such party at its address below or as from time to time may be directed otherwise by such party by notice to the other party. Any such mailed notice shall be deemed to have been given three (3) business days after mailing.

All notices to LICENSOR shall be addressed as follows:

Kimberly-Clark Corporation
351 Phelps Drive
Irving, Texas 75038
Attention: Senior Vice President, Law and Government Affairs

All notices to LICENSEE shall be addressed as follows:

Paragon Trade Brands, Inc.
180 Technology Parkway
Norcross, Georgia 30092
Attention: General Counsel

ARTICLE XIII

PATENT MARKING

LICENSEE shall mark each package containing Infant Disposable Diapers or Absorbent Pants (as the case may be) which, but for this license, would infringe a Valid Claim with a statement substantially equivalent to

"The products are made under one or more of the following U.S. Patents: 4,704,116, 4,846,823, 5,413,570, 5,415,644 and 5,599,338."

LICENSEE shall modify such statement upon request of LICENSOR to add a reference to Enloe Patents which cover LICENSEE's product and that issue after the date of this Agreement.

LICENSEE shall commence the marking program upon exhaustion of LICENSEE's current supply of packaging materials.

ARTICLE XIV
WAIVER

The waiver by either of the parties to this Agreement of any breach of any provision hereof by the other party shall not be construed to be a waiver of any succeeding breach of such provision or a waiver of the provision itself.

ARTICLE XV
ENFORCEABILITY

If and to the extent that any court or governmental tribunal of competent jurisdiction holds any of the terms, provisions or conditions or part thereof of this Agreement, or the application hereof to any circumstances, to be invalid or unenforceable in a final nonappealable order, the remainder of this Agreement and the application of such term, provision or condition or part thereof to circumstances other than those as to which it is held invalid or enforceable shall not be affected thereby and each of the other terms, provisions and conditions of this Agreement shall be valid and enforceable to the extent it is consonant with the intention of the parties upon entering into this Agreement.

ARTICLE XVI
HEADINGS

The headings appearing herein have been inserted solely for the convenience of the parties hereto and shall not affect the construction, meaning or interpretation of this Agreement.

ARTICLE XVII

ENTIRE AGREEMENT

This Agreement is entered into as part of a Settlement Agreement. The terms and provisions contained in this Agreement and the Settlement Agreement (including its attachments) attached hereto as Exhibit E constitute the entire agreement and understanding between the parties to this Agreement. Neither party has relied or will rely on any representation or agreement of the other except to the extent set forth herein or in the Settlement Agreement (including its attachments), and neither party shall be bound by or charged with any oral, written or implied agreements, representations, warranties, understandings, commitments or obligations not specifically set forth herein or in the Settlement Agreement (including its attachments). These Agreements may not be released, discharged, abandoned, changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the parties hereto.

Each of the parties hereto has caused this instrument to be executed by its respective duly authorized representative as of the day and year first above written.

KIMBERLY-CLARK CORPORATION		PARAGON TRADE BRANDS, INC.	
BY:	/s/ O. George Everbach	BY:	/s/ B. V. Abraham
	O. George Everbach (print)		B. V. Abraham (print)
TITLE:	Senior Vice President (print)	TITLE:	Chairman and CEO (print)

ATL01/10476017v1

EXHIBIT B

SETTLEMENT AGREEMENT

This Settlement Agreement, dated November 1, 2001, is made by and between Paragon Trade Brands, Inc., a Delaware corporation ("Paragon"), and Kimberly-Clark Corporation, a Delaware corporation ("K-C"). (When used below, the term "Parties" refers collectively to Paragon and K-C, while the term "Party" refers to Paragon and K-C in their individual capacity as signatories to this Settlement Agreement.)

WHEREAS Paragon and K-C are parties to the March 15, 1999 License Agreement Between Kimberly-Clark Corporation And Paragon Trade Brands, Inc. (the "Enloe License");

WHEREAS K-C owns the Enloe Patents, as defined in Section 1.07 of the Enloe License;

WHEREAS Paragon and K-C have a dispute (the "Running Royalty Dispute") as to whether Paragon has an obligation to pay royalties pursuant to Sections 1.09 and 4.01 of the Enloe License ("Running Royalties") following the district court's November 3, 1999 decision in Kimberly-Clark Corporation v. Tyco International

(US), Inc., 98-C-756 (W.D. Wisc.), aff'd, No. 00-1080, 2001 WL 170461 (Fed. Cir. Feb. 20, 2001), cert. denied, 70 U.S.L.W. 3076 (U.S. Oct. 1, 2001)(the "Tyco Decision");

WHEREAS on April 27, 2001, Paragon initiated arbitration pursuant to Article VI of the Enloe License (the "Arbitration");

WHEREAS Paragon seeks in the Arbitration (i) a ruling that it does not owe Running Royalties on its current products; (ii) recoupment of all Running Royalties paid to K-C on sales occurring after November 3, 1999, with interest; (iii) an award of expenses of the arbitrators; and (iv) an award of attorneys' fees;

WHEREAS K-C (i) denies that Paragon is entitled to recoupment of any Running Royalties already paid to K-C; (ii) denies that Paragon is entitled to an award of expenses of the arbitrators; (iii) denies that Paragon is entitled to an award of attorneys' fees; (iv) asserts that Paragon owes Running Royalties on at least some of Paragon's current products; and

(v) asserts that Paragon is no longer entitled to the lower Running Royalty rate of 1.5%;

WHEREAS Paragon and K-C now desire to (i) settle, compromise and finally resolve the Running Royalty Dispute and (ii) avoid the risks, burden, expense and inconvenience of continuing to pursue the Arbitration, without any admission of liability by either Party;

NOW THEREFORE, for good and valuable consideration, and in order to settle, compromise and finally resolve the Running Royalty Dispute and the Arbitration, Paragon and K-C do hereby agree as follows:

1. Paragon has paid Running Royalties to K-C for all applicable sales of Paragon products through March 4, 2001. Paragon has no obligation to pay Running Royalties for any Paragon products sold in the Territory (as defined in Section 1.14 of the Enloe License) after March 4, 2001 through the date of this Agreement. Subsequent to the date of this Agreement, Paragon will make no further payments of Running Royalties to K-C under the Enloe License unless Paragon changes its products to be within the express scope of the Enloe claims

as set forth in the Tyco Decision. In making such determination, no effect shall be given to any previous statement made or conduct engaged in by Paragon, which may otherwise have been deemed an admission by Paragon or have created an estoppel against Paragon. In the event Paragon changes its products to be within the express scope of the Enloe claims as set forth in the Tyco Decision, Paragon remains eligible for the volume discount as set forth in Section 4.01 of the Enloe License.

2. Upon execution of this Settlement Agreement, Paragon will no longer mark its products pursuant to Article XIII of the Enloe License; except that Paragon may exhaust its current supply of packaging materials. However, if Paragon changes its products to be within the express scope of the Enloe claims (as set forth in paragraph 1 above), then Paragon will commence appropriate marking.

3. K-C will not refund to Paragon, and Paragon will not seek the refund of, any Running Royalties previously paid by Paragon to K-C, including the Running Royalties tendered by

Paragon to K-C under protest on January 24, 2001 and April 27, 2001.

4. K-C has affiliates outside the Territory (the "Foreign K-C Affiliates") that hold all foreign counterparts to any of the Enloe Patents (the "Foreign Enloe Patents"). Attached as Exhibit A is a listing by country of all Foreign Enloe Patents and the holders thereof. K-C represents and warrants that licenses to the Foreign Enloe Patents shall be offered to Paragon at royalty rates not to exceed 3%. Upon written request by Paragon the appropriate Foreign K-C Affiliate will negotiate with Paragon in good faith a license to Paragon for the requested Foreign Enloe Patent on reasonable terms that include the specific terms set forth in Exhibit B hereto and, with the exception of Mexico, that also are no less favorable than the terms of any licenses to the specified Foreign Enloe Patents that have previously been granted by the Foreign K-C Affiliate. In the case of Mexico, the terms of the license granted to Paragon shall be no less favorable than any license to any Foreign Enloe Patent in Mexico that has been granted by any

Foreign K-C Affiliate to any person or entity other than Grupo Mabe P.I., S.A. de C.V.

5. K-C represents and warrants that, as of the date this Settlement Agreement is executed, neither Kyle Kappes, Senior Patent Counsel, George Everbach, Senior Vice President - Law and Government Affairs, Tom Mielke, Vice President and Chief Patent Officer, Dudley Lehman, Group President, Infant and Child Care, nor Cheryl Perkins, Vice President and Senior Technical Officer, have reasonable grounds to believe that Paragon is infringing any patent owned by, or assigned to, K-C or any other patent that K-C has the right to enforce or cause to be enforced. The receipt of an unsubstantiated and uninvestigated allegation of infringement that the receiver has no reasonable basis for believing to be true shall not be considered reasonable grounds to believe that infringement exists.

6. Each of Paragon and K-C represents and warrants that, as of the date this Settlement Agreement is executed, it has no firm knowledge of any (i) dispute concerning, (ii) breach of, or (iii) failure to perform under, the Enloe License, other

than disputes, alleged breaches or alleged lack of performance related to, or arising out of, the Running Royalty Dispute and the Arbitration.

7. In consideration of the foregoing, and upon execution of this Settlement Agreement, Paragon and K-C hereby mutually fully settle, release and forever discharge each other and their respective successors, affiliates, representatives, heirs and assigns, of and from any and all existing or potential claims, actions, causes of action, rights or liabilities, whether presently known or unknown, arising out of or in any way connected to the Running Royalties, the Running Royalty Dispute and the Arbitration.

8. Upon execution of the Settlement Agreement, Paragon will withdraw its request initiating the Arbitration. Paragon will be responsible for notifying, discharging and paying the expenses of its named arbitrator, while K-C will be responsible for notifying, discharging and paying the expenses of its named arbitrator.

9. The Parties expressly reserve the right to arbitrate any breach of this Settlement Agreement, using the arbitration procedures set forth in Article VI of the Enloe License.

10. Except as modified by this Settlement Agreement, the Enloe License shall remain in effect until it expires by its terms.

11. This Settlement Agreement is a compromise agreement, and it is not an admission on the part of either Paragon or K-C of liability or of the truth or validity of any claim, allegation, assertion or position taken by Paragon or K-C in connection with the Running Royalty Dispute or the Arbitration. Neither the contents of this Settlement Agreement nor the fact of its execution shall be admissible in any subsequent action between the parties, except for an arbitration for breach of the Settlement Agreement or otherwise to enforce its terms. However, K-C or any Foreign K-C Affiliate may produce this Settlement Agreement and use it as an exhibit or evidence in

any litigation with a third party to enforce the Enloe Patents or any Foreign Enloe Patent.

12. This Settlement Agreement cannot be modified, amended or changed in any respect orally or by the conduct of the Parties. Any amendment, modification or change of this Settlement Agreement may be made only pursuant to a writing signed by the Parties.

13. This Settlement Agreement shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of Delaware, without giving effect to the principles of conflicts of law thereof.

14. This Settlement Agreement represents the complete undertaking and agreement of the Parties with respect to the subject matter thereof.

15. This Settlement Agreement may be executed in one or more counterparts which together comprise one and the same agreement.

16. Each Party represents and warrants that the signatory hereto has full authority to enter into this Settlement Agreement on behalf of that Party and the authority and capacity to bind that Party thereto.

17. Each Party acknowledges and represents that in entering into this Settlement Agreement, it is not relying on any representations (written or oral) by or on behalf of the other Party not expressly set forth in this Settlement Agreement.

IN WITNESS WHEREOF, Paragon and K-C have executed this Agreement as of this 1st day of November 2001.

PARAGON TRADE BRANDS, INC.

By: David C. Nicholson

Name: DAVID C. Nicholson

Title: EVP & CFO

KIMBERLY-CLARK CORPORATION

By: W. Dudley Lehman

Name: W. Dudley Lehman

Title: Group President

Exhibit A

COUNTRY	PATENT NUMBER	K-C AFFILIATE
Australia	586633	Kimberly-Clark Australia Pty. Ltd.
Brazil	PI 8503131-3	Kimberly-Clark do Brasil Limitada
Mexico	161292	Kimberly-Clark de Mexico, S.A. de C.V.
Philippines	26223	Kimberly-Clark Philippines, Inc.
South Africa	85/4793	Kimberly-Clark Southern Africa (Holdings) (Pty) Ltd.
South Korea	62865	YuHan-Kimberly, Limited
Thailand	5377	Kimberly-Clark Thailand Limited
Trinidad	18/1992	Kimberly-Clark Worldwide, Inc.

Exhibit B

1. Paragon shall pay royalties only for the manufacture and sale of products that utilize the licensed Foreign Enloe Patent(s). Paragon shall not pay a minimum royalty for any Foreign Enloe Patent.

2. Paragon shall not pay multiple royalties for products that are manufactured in one location pursuant to a license granted by K-C or a Foreign K-C Affiliate, and sold in a different location pursuant to a different license granted by K-C or a second Foreign K-C Affiliate. In this specific situation (where the manufacturing and sales location are each subject to a different Enloe Patent or Foreign Enloe Patent), Paragon shall pay royalties under the license applicable to the country in which the products are sold.

3. Paragon shall be given "most favored licensee" protection in each license by each Foreign K-C Affiliate, such that if a Foreign K-C Affiliate subsequently grants a license under a Foreign Enloe Patent to a third party on terms more favorable than any license on the same patent it has previously granted to Paragon, then the Foreign K-C Affiliate must offer to Paragon a new or amended license on the same terms.