

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

NM, LLC

Plaintiff,

v.

THE QUIKRETE COMPANIES, LLC,

Defendant.

Civil Action No.:

**JURY TRIAL DEMANDED**

**COMPLAINT**

NM, LLC (hereafter “Plaintiff NM”), Plaintiff, brings this action against Defendant The Quikrete Companies, LLC (hereafter “Defendant Quikrete”), and alleges the following:

**THE PARTIES**

1. Plaintiff NM is a limited liability company organized and doing business under the laws of Delaware.
2. Plaintiff NM is the owner of record and assignee of U.S. Patent No. 6,199,048 (“the ‘048 Patent”) and U.S. Patent No. 8,131,597 (“the ‘597 Patent”) (collectively, “the Asserted Patents”) and Plaintiff NM has the full right, title, and interest to pursue this lawsuit based on infringement of the Asserted Patents. Both the ‘048 and ‘597 Patents expired on October 3, 2015.
3. Defendant Quikrete is a Delaware Limited Liability Company, with its principal place of business at 3490 Piedmont Road NE, Suite 1300, Atlanta, GA 30305; its agent for service of process is The Corporation Trust Company, located at 1209 Orange Street, Wilmington, DE 19801.

**JURISDICTION AND VENUE**

4. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 271, *et seq.*

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

6. This Court has personal jurisdiction over Defendant Quikrete since Defendant Quikrete is a Delaware Limited Liability Company and on information and belief, Defendant Quikrete has transacted business in this judicial district, directly or through intermediaries, and/or committed acts of infringement in this judicial district. Defendant Quikrete markets within Delaware an extensive array of premixed concrete products at least through Home Depot and Lowes retail outlets located, respectively, at 601 Naamans Road, Claymont, DE, 19703, and 1450 N. Dupont Highway, Dover, DE, 19901.

7. Venue in this district is proper pursuant to 28 U.S.C. §§ 1391(c) and (d), and 1400(b).

**BACKGROUND**

8. Inventors Frank C. Hudetz and Peter R. Hudetz are pioneers in two-dimensional barcode technology and infrastructure solutions. The inventions of the Asserted Patents involve proprietary platform technology enabling consumers easy and quick access to information by scanning data carriers, such as Quick Response (“QR”) codes as claimed in the patents asserted in this action.

9. This suit alleges infringement by Defendant Quikrete of two of Plaintiff NM’s patents, specifically the Asserted Patents.

10. Defendant Quikrete has been expressly aware of the ‘597 Patent since at least on

or about July 2, 2014 (the “date of actual notice”), when the Chief Executive Officer of Plaintiff NM’s predecessor in title, NeoMedia Technologies, wrote to Defendant Quikrete’s Chief Executive Officer, identified the ‘597 Patent specifically and placed Defendant Quikrete on notice of infringement by stating, *inter alia*: “NeoMedia has recently encountered QR codes used by Quikrete. . . . The use of the code for its intended purpose has not been authorized by NeoMedia and infringes, at a minimum, several of NeoMedia’s patents. See, for example, claim 1 of U.S. Patent No. 8,131,597.” Following that written notice, multiple telephone and email contacts, regarding the infringement of the Asserted Patents and a potential licensing agreement, occurred between NeoMedia Technologies and Defendant Quikrete’s legal department and outside counsel. These negotiations ultimately bore no fruit; NeoMedia received no more responses from Quikrete’s outside counsel after about April 21, 2015.

**COUNT I: INFRINGEMENT OF THE U.S. PATENT 6,199,048**

11. Plaintiff NM realleges and incorporates by reference the prior paragraphs 1 through 10 of this Complaint, as if fully set forth herein.

12. On March 6, 2001, U.S. Patent No. 6,199,048 was issued to Frank C. Hudetz and Peter R. Hudetz, as the inventors thereof. A true and correct copy of the ‘048 Patent, which is entitled “System and Method for Automatic Access of a Remote Computer over a Network,” is attached hereto as Exhibit A.

13. Upon information and belief, Defendant Quikrete infringed the ‘048 Patent in violation of 35 U.S.C. § 271(a) by using the patented invention to, *inter alia*, use a method infringing the claims of the ‘048 Patent. An Infringement Chart detailing the infringement by Defendant Quikrete of Claim 1 of the ‘048 Patent, as an example of infringement of that patent, is attached hereto as Exhibit B.

14. Plaintiff NM is entitled to recover from Defendant Quikrete damages as a result of Defendant Quikrete's acts of infringement of the '048 Patent prior to its expiration on October 3, 2015, with damages in amounts subject to proof at trial.

**COUNT II: INFRINGEMENT OF THE '597 PATENT**

15. Plaintiff NM realleges and incorporates by reference the prior paragraphs 1 through 10 of this Complaint, as if fully set forth herein.

16. On March 6, 2012, U.S. Patent No. 8,131,597 was issued to Frank C. Hudetz and Peter R. Hudetz, as the inventors thereof. A true and correct copy of the '597 Patent, which is entitled "System and Method for Using an Ordinary Article of Commerce to Access a Remote Computer," is attached hereto as Exhibit C.

17. Upon information and belief, Defendant Quikrete infringed the '597 Patent in violation of 35 U.S.C. § 271(a) by using the patented invention to, *inter alia*, use a method infringing Claim 1. An Infringement Chart detailing the infringement by Defendant Quikrete of Claim 1 of the '597 Patent, as an example of infringement of that patent, is attached hereto as Exhibit D.

18. Upon information and belief, Defendant Quikrete also infringed the '597 Patent in violation of 35 U.S.C. § 271(b) by intentionally actively inducing infringement after actual notice of infringement of the '597 Patent during the time period from on or about July 2, 2014, the date of actual notice, through the date of expiration of the Patent on October 3, 2015.

19. Defendant Quikrete intentionally actively induced infringement of the '597 Patent at least by placing obvious and easily noticeable QR codes on product packaging and advertisements associated with Defendant Quikrete's products for sale with the intention of inducing customers to access the QR codes and information accessible via the QR codes, in order

to increase sales of Defendant Quikrete's products.

20. Plaintiff NM is entitled to recover from Defendant Quikrete damages as a result of Defendant Quikrete's acts of infringement of the '597 Patent prior to its expiration on October 3, 2015, and as a result of Defendant's acts of intentional active inducement of infringement of the '597 Patent from on or about July 2, 2014 through October 3, 2015, with both damages in amounts subject to proof at trial.

### **PRAYER AND RELIEF**

**WHEREFORE**, Plaintiff NM, LLC prays for judgment against Defendant Quikrete for the following relief:

A. a judgment declaring that Defendant The Quikrete Companies, LLC infringed the '048 and '597 Patents;

B. an accounting for damages under 35 U.S.C. § 284 from Defendant The Quikrete Companies, LLC for its infringement of the '048 and '597 Patents, prior to its expiration on October 3, 2015, and an award of damages ascertained against Defendant The Quikrete Companies, LLC in favor of Plaintiff NM, LLC, together with interest and costs thereon;

C. an accounting for damages under 35 U.S.C. § 271(b) from Defendant The Quikrete Companies, LLC for its intentional active inducement of infringement of the '597 Patent, from the date of actual notice of the patent, on or about July 2, 2014, through the patent's expiration on October 3, 2015, and an award of damages ascertained against Defendant The Quikrete Companies, LLC in favor of Plaintiff NM, LLC, together with interest and costs thereon; and,

D. such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff NM, LLC demands a trial by jury of all issues properly triable by jury in this action.

Respectfully submitted,

**O'KELLY & ERNST, LLC**

Dated: September 16, 2016

/s/ Sean T. O'Kelly

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