

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

|   |   |
|---|---|
| <p><b>Flectere LLC,</b><br/><br/>Plaintiff,<br/><br/>v.<br/><br/><b>Costco Wholesale Corporation,</b><br/><br/>Defendant.</p> | <p>Case No. _____<br/><br/>Patent Case<br/><br/>Jury Trial Demanded</p> |
|---|---|

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Flectere LLC (“Flectere”), through its attorney, complains of Costco Wholesale Corporation (“Costco”), and alleges the following:

**PARTIES**

1. Plaintiff Flectere LLC is a corporation organized and existing under the laws of Texas and maintains its principal place of business at 1400 Preston Road, Suite 400, Plano, TX 75093.

2. Defendant Costco Wholesale Corporation is a corporation organized and existing under the laws of Washington that maintains its principal place of business at 999 Lake Drive Issaquah, WA 98027.

**JURISDICTION**

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

4. This Court has exclusive subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Costco because it has engaged in systematic and continuous business activities in the Eastern District of Texas. Specifically, Costco provides its full range of services to residents in this District. As described below, Costco has committed acts of patent infringement giving rise to this action within this District.

#### **VENUE**

6. Venue is proper in this District under 28 U.S.C. § 1400(b) because Costco has committed acts of patent infringement in this District and has a regular and established place of business in this District. Specifically, Costco has retail stores in this location, including a store located at 3800 N Central Expy, Plano, TX 75074. In addition, Flectere has suffered harm in this district.

#### **PATENTS-IN-SUIT**

7. Flectere is the assignee of all right, title and interest in United States Patent Nos. 6,272,506 (the "'506 Patent"), and 6,401,094 (the "'094 Patent") (collectively, the "Patents-in-Suit"), including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the Patents-in-Suit. Accordingly, Flectere possesses the exclusive right and standing to prosecute the present action for infringement of the Patents-in-Suit by Costco.

#### **The '506 Patent**

8. On August 7, 2001, the United States Patent and Trademark Office issued the '506 Patent. The '506 Patent is titled "Computerized Verification Form Processing System and Method." The application leading to the '506 Patent was filed on September 12, 1997. A true and correct copy of the '506 Patent is attached hereto as Exhibit A and incorporated herein by reference.

9. The '506 Patent is valid and enforceable.

10. The inventors recognized that there was a need for improving computerized form processing systems that complied with current manufacturing procedures. Ex. A, 2:46-48.

11. The invention in the '506 Patent provides an improved computerized form processing system and method. Ex. A, 2:15-18.

12. To this end, the inventors recognized the importance of automatically keeping track of changes and complying with government regulations. Ex. A, 4:48-52. (“Thus, system 20, FIG. 2 provides an improved computerized form processing System and method which automatically keeps track of all changes made to data entries in a computerized form and therefore complies with FDA requirements concerning data changes.”).

### **The '094 Patent**

13. On June 4, 2002, the United States Patent and Trademark Office issued the '094 Patent. The '094 Patent is titled “System and Method for Presenting Information in Accordance with User Preference.” The application leading to the '094 Patent was filed on May 27, 1999. A true and correct copy of the '094 Patent is attached hereto as Exhibit B and incorporated herein by reference.

14. The '094 Patent is valid and enforceable.

15. The inventors recognized that there was a need for users to dynamically format web pages according to their preferences. Ex. B, 2:2–12.

16. To this end, the inventors created a system and method of web pages that allow users to customize based on preference. *Id.* at 2:13–20. (“To achieve the above and other objects, the present invention is directed to a system and method. . . for delivering information to a user in a format selected by the user. The information, instead of being stored in a static HTML document, is dynamically formatted for each user. . . .”).

**COUNT I: INFRINGEMENT OF THE '506 PATENT**

17. Flectere incorporates the above paragraphs herein by reference.

18. **Direct Infringement.** Costco has been and continues to directly infringe at least Claim 11 of the '506 Patent in this District and elsewhere in the United States by providing a “computerized form processing system,” for example, Costco’s payment processing portal, that is a computerized form processing system allowing users to fill in their contact information. See Figure 1, available at: <https://www.costco.com/CheckoutShippingView>.

The screenshot shows the Costco checkout page. At the top left is the Costco Wholesale logo. To the right are links for 'Return to Cart' and 'Customer Service'. Below the logo is the word 'Checkout' and a breadcrumb trail: 'Shipping > Payment > Review Order'. The main content is divided into two columns. The left column is titled 'Shipping Address' and contains a form with the following fields: First Name, Last Name, Company Name (optional), Street Address, ZIP Code, City, State (a dropdown menu), Phone Number, and Email Address. At the bottom of this form are two checkboxes: 'Add to Address Book' and 'Save as Default Shipping Address'. The right column is titled 'Order Summary' and contains a table with the following items: Subtotal (1 Items) for \$55.99, Shipping for \$0.00, 2-Day Delivery Fee for \$3.00, Tax for \$0.00, Enter Promo Code, and Non-Member 5% Surcharge for \$2.80. The total is \$61.79. Below the table is a section for Costco membership, with a field for 'Membership Number' and an 'Apply' button. A note states: 'Executive Members will earn approximately \$1.12 towards their annual 2% Reward on this purchase. If you are not an Executive Member, sign up today.' At the bottom of the right column is a green 'Continue to Payment' button and a promotion for the Costco Anywhere Visa Card by Citi, with an 'Apply Today' button.

Figure 1. Costco’s payment processing portal allows users to fill in their contact information.

19. Costco’s payment processing portal has Claim element 11(a): “a database for storing at least one form including one or more fields.” For example, Costco’s payment

processing portal internally stores data entered into the form. *See* Figure 2, available at:

<https://www.costco.com/CheckoutShippingView>.

## Checkout

### Shipping Address

|  |                                     |
|--|-------------------------------------|
| First Name   |                                     |
| <input type="text"/>   |                                     |
| Last Name  |                                     |
| <input type="text"/>   |                                     |
| Company Name (optional)  |                                     |
| <input type="text"/>   |                                     |
| Street Address   |                                     |
| <input type="text"/>   |                                     |
| <input type="text"/>   |                                     |
| ZIP Code   |                                     |
| <input type="text"/>   |                                     |
| City   | State                               |
| <input type="text"/>   | <input type="text" value="Select"/> |
| Phone Number   |                                     |
| <input type="text"/>   |                                     |
| Email Address  |                                     |
| <input type="text"/>   |                                     |
| <input checked="" type="checkbox"/> Add to Address Book              |                                     |
| <input checked="" type="checkbox"/> Save as Default Shipping Address |                                     |

```

<!-- Start Shipping Modular JSP -->
<div class="checkout-container">
  <div class="checkout-container-title row"></div>
  <div id="address-block-shipping" class="checkout-container-body">
    <form id="address-modal-inline" class="address-form">
      <div class="address-text-error error"></div>
      <input type="hidden" name="addressType" value="S">
      <input type="hidden" name="addressId">
      <input type="hidden" name="nickname">
      <input type="hidden" name="mInitial">
      <div id="select-saved" class="row h7-style-guide hide"></div>
      <div class="row">
        ::before
        <div class="form-group col-xs-12 col-lg-10">
          <label for="firstId">First Name</label>
          <input class="form-control ctHidden" type="text" autocomplete="given-name" name="firstModal" required id="firstId"> == $0
        </div>
        ::after
      </div>
      <div class="row">
        ::before
        <div class="form-group col-xs-12 col-lg-10">
          <label for="lastId">Last Name</label>
          <input class="form-control ctHidden" type="text" autocomplete="family-name" name="lastModal" required id="lastId">
        </div>
        ::after
      </div>
      <div class="row"></div>
      <div id="country-row" class="row hide"></div>
      <div class="row">
        ::before
        <div class="form-group address-1 col-xs-12 col-lg-10">
          <label for="addressId">Street Address</label>
          <input class="form-control ctHidden" type="text" name="address1" required id="address1Id" aria-required="true" maxlength="30">
        </div>
      </div>
    </form>
  </div>
</div>

```

Figure 2. Costco's payment processing portal internally stores data entered into the form.

20. Costco's payment processing portal has Claim element 11(b): "a viewer for viewing a stored form." For example, Costco's payment processing portal allows users to see the data they enter into the form. *See* Figure 2.

21. Costco's payment processing portal has Claim element 11(c): "a data entry device for allowing a user to enter information into the fields of the form." For example, Costco's payment processing portal allows users to enter in data, such as street address, into the form. *See* Figure 3, available at: <https://www.costco.com/CheckoutShippingView>.

### Shipping Address

First Name  
Jon

Last Name  
Doe

Company Name (optional)

Street Address  
1400 Preston Rd Ste 400

ZIP Code  
75093

City  
Plano

State  
Texas

Phone Number

Email Address

Add to Address Book  
 Save as Default Shipping Address

Figure 3. Costco's payment processing portal allows users to enter in data, such as street address, into the form.

22. Costco's payment processing portal has Claim element 11(d): "a monitoring routine configured to actively monitor whether previously entered information in a field of the form is being changed by the user." For example, Costco's payment processing portal monitors whether previously entered information is being changed by users. See Figure 4, available at: <https://www.costco.com/CheckoutShippingView>.

```

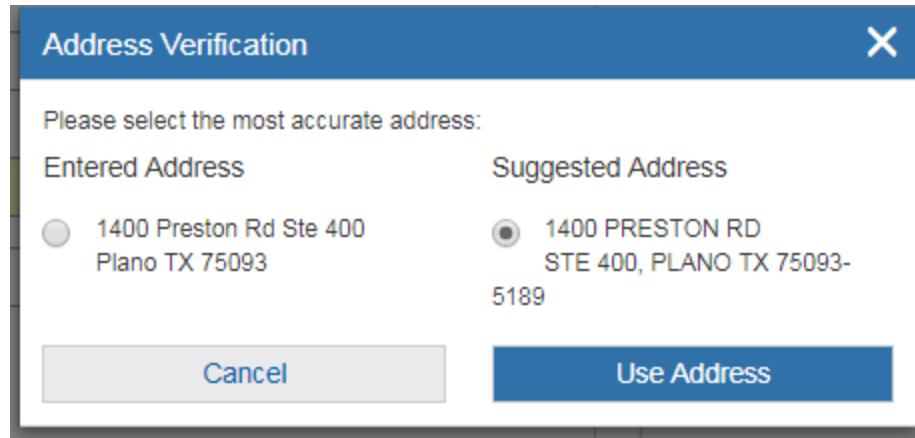
▼<div class="form-group address-1 col-xs-12 col-lg-10">
  <label for="address1Id">Street Address</label>
  <input class="form-control ctHidden" type="text" name="address1" required id="address1Id" aria-required="true"
    maxlength="30">
</div>
▼<div class="form-group col-xs-12 col-lg-10">
  <label class="hidden" for="address2Id">Street Address Line 2</label>
  <input class="form-control ctHidden" type="text" name="address2" id="address2Id" aria-required="true" maxlength=
    "30">
</div>
  ::after
</div>
<div id="zipcode_patterns" value="^(d{5})(-d{4})?$$"></div>
<div id="zipFormatterFlag" value="false"></div>
▼<div class="row">
  ::before
  ▼<div class="form-group col-xs-12 col-lg-5">
    <label for="postalId">ZIP Code</label>
    <input class="form-control ctHidden" type="text" autocomplete="postal-code" name="postal" required id="postalId"
      aria-required="true" maxlength="10"> == $0
  </div>
  ::after
</div>
▼<div class="row">
  ::before
  ▼<div class="form-group col-xs-12 col-lg-5">
    <label for="cityId">City</label>
    <input class="form-control ctHidden" type="text" autocomplete="address-level2" name="city" required id="cityId"
      aria-required="true">
  </div>
  ▼<div class="form-group col-xs-12 col-lg-5">
    <label for="stateId">State</label>
    ▼<div class="style-select">
      ▶<select name="state" class="stateprov-select marginSix ctHidden" required id="stateId" aria-required="true">...
    </select>
  </div>

```

*Figure 4. Costco's payment processing portal monitors whether previously entered information is being changed by users.*

23. Costco's payment processing portal has Claim element 11(e): "a field modification verification routine configured to, on the viewer, prompt the user to sign off on any such change." For example, Costco's payment processing portal will ask users whether they want to use a verified shipping address instead of the address they manually entered and is configured to then prompt the user to sign off on a change to the address information. *See* Figure 5, available at: <https://www.costco.com/CheckoutShippingView>.





*Figure 5. Costco's payment processing portal will ask users whether they want to use a verified shipping address instead of the address they manually entered.*

24. **Induced Infringement.** Costco has also actively induced, and continues to induce, the infringement of at least Claim 11 of the '506 Patent by actively inducing its customers, including merchants and end-users to use Costco's website in an infringing manner as described above. Upon information and belief, Costco has specifically intended that its customers use its website that infringe at least Claim 11 of the '506 Patent by, at a minimum, providing access to support for, training and instructions for, its website to its customers to enable them to infringe at least Claim 11 of the '506 Patent, as described above. Even where performance of the steps required to infringe at least Claim 11 of the '506 Patent is accomplished by Costco and Costco's customer jointly, Costco's actions have solely caused all of the steps to be performed.

25. Flectere is entitled to recover damages adequate to compensate it for such infringement in an amount no less than a reasonable royalty under 35 U.S.C. § 284.

26. Flectere will continue to be injured, and thereby caused irreparable harm, unless and until this Court enters an injunction prohibiting further infringement.

## **COUNT II: INFRINGEMENT OF THE '094 PATENT**

27. Flectere incorporates the above paragraphs herein by reference.

28. **Direct Infringement.** Costco has been and continues to directly infringe at least Claim 13 of the '094 Patent in this District and elsewhere in the United States by providing a method for “presenting information to a user on a workstation operated by the user in accordance with a preference specified by the user through the workstation,” for example, Costco’s website provides a method for presenting information to a user on a workstation (such as the user’s device or web browser) in which the user can modify the format in which the information is being presented by preference (such as selecting Grid/List view to change the formatting of the identified search result). See Figure 6, available at: <https://www.costco.com/>; see also Figure 7, available at: <https://www.costco.com/watches.html>.

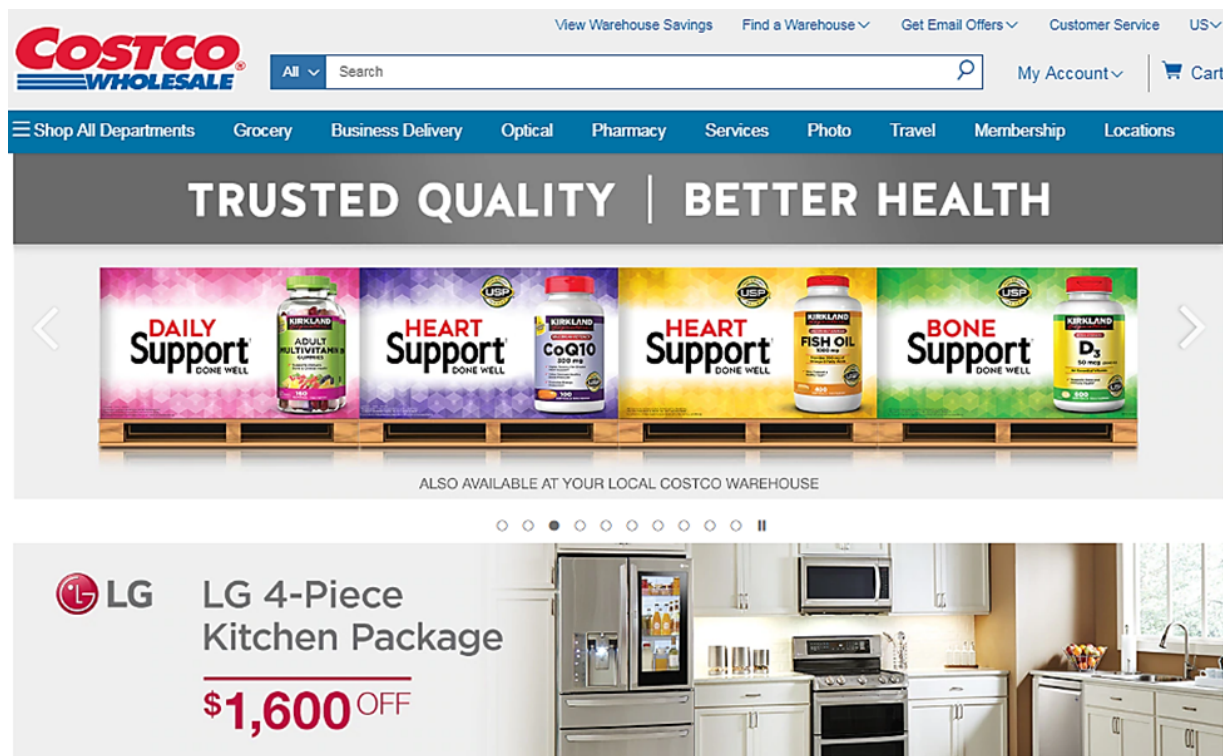



Figure 6. Costco’s website provides a method for presenting information to a user on a workstation.



[View Warehouse Savings](#)
[Find a Warehouse](#)
[Get Email Offers](#)
[Customer Service](#)
[US](#)

All

🔍

[My Account](#)
🛒 Cart

Shop All Departments
Grocery
Business Delivery
Optical
Pharmacy
Services
Photo
Travel
Membership
Locations

Home / Jewelry, Watches & Sunglasses / Watches

## Watches

**Filter Results** Clear All

**Category** —

Select a Different Category

< Jewelry, Watches & Sunglasses

Watches

All Watches (61)

Men's Watches (40)

Show more options

---

**Price** —

\$50 - \$100 (26)

\$100 - \$200 (21)

\$200 - \$500 (11)

\$500 - \$1,000 (1)

\$5,000 - \$10,000 (3)

Show more options

---

**Brand** +

---

**Delivery Type** +


---

**Watch Strap Material** +


---

**Water Resistance Depth** +


Shop by Category



All Watches




Men's Watches



Women's Watches

---

Sort by: Best Match
Showing 1-24 of 63




Member Only Item

Breitling Navitimer Black Dial Men's Automatic Watch

★★★★★ (2)

Compare Product




Member Only Item

Rolex Pearlmaster Yellow Gold & Diamonds Ladies Automatic Watch

★★★★★ (2)

Compare Product




Member Only Item

Badgley Mischka Rose Gold Tone Flower Women's Watch

★★★★★ (6)

Compare Product



Member Only Item

Anne Klein New York Two-tone Women's Watch with Interchangeable Bezel

★★★★★ (13)

Compare Product

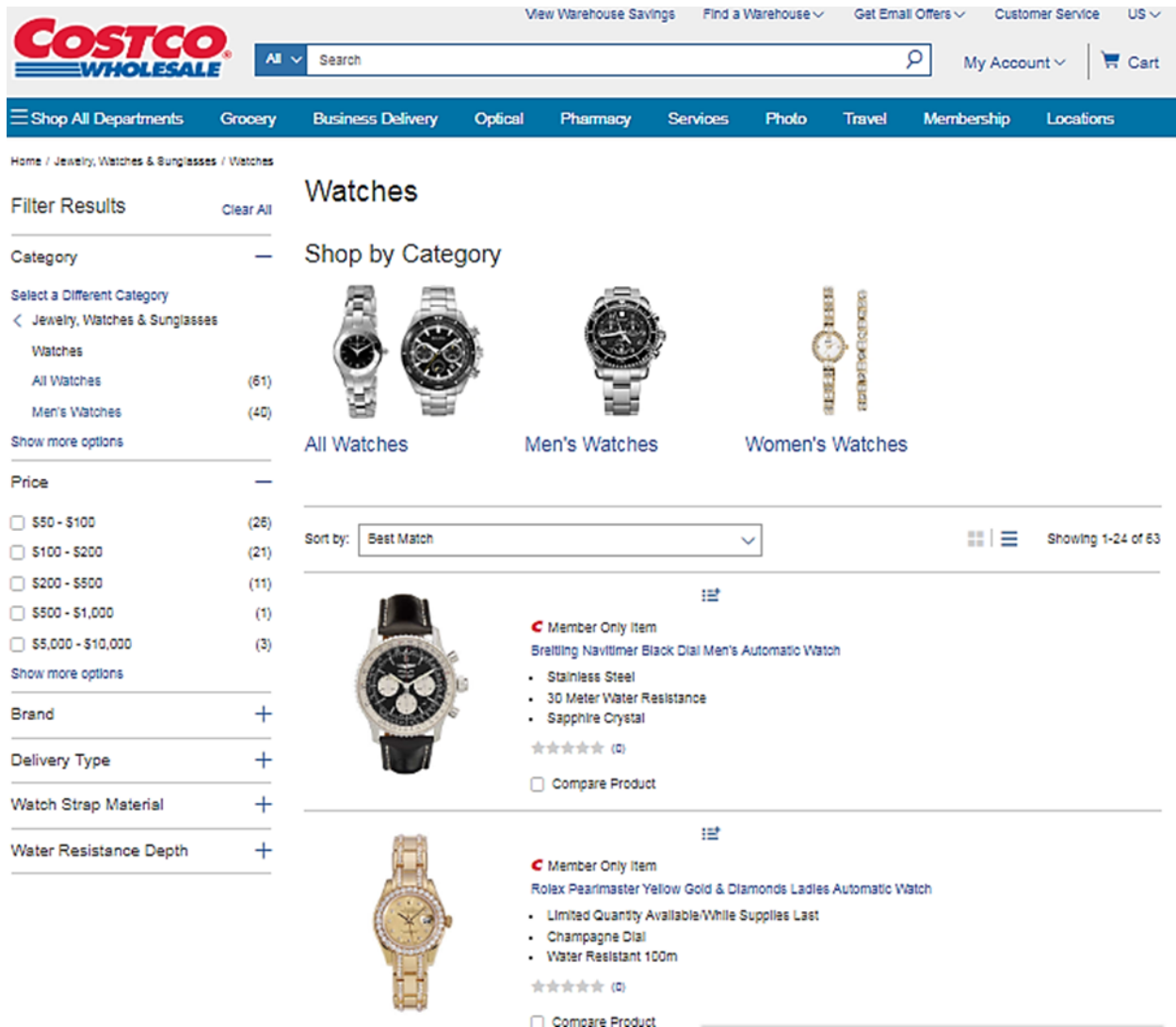


Figure 7. Costco’s website allows users to modify the format in which the information is being presented by preference.

29. Costco’s website performs the step of Claim 13(a): “storing the information.” For example, Costco’s website maintains a backend database in which it stores all its information which ranges from dealers to pharmacies to products listed on their website, etc. See Figure 8, available at: <https://www.costco.com/privacy-policy.html>; see also Figure 9, available at: [http://email.online.costco.com/costco/services/CostcoAuto\\_Article.html](http://email.online.costco.com/costco/services/CostcoAuto_Article.html).

## Online Specifics

Like most web sites, our servers log your IP address, the URL from which you accessed our site, your browser type, and the date and time of your purchases and other activities. We use this information for system administration, troubleshooting, fraud investigation and communications from Costco (only).

## Health Care Centers

### Pharmacies

This section explains our policy with respect to the uses of personal pharmacy information, whether you use our services online or in a warehouse pharmacy. Prescription information is stored in an electronic system separate from all other member stored personal information. To fill your prescriptions, we collect your name, address, telephone number, age, gender, allergies, and other prescription-related information. We are required by law to collect this type of information to identify potentially dangerous drug interactions or other health concerns. We use this information to process your order, contact you with any questions and provide you with the counseling you may require. Our pharmacist database is maintained separately from other Member databases. Only licensed pharmacists, specifically authorized staff, and others permitted by law to view this database, are allowed to do so. When you use our services, you consent to our use and disclosure of your personal health information for purposes of treatment, payment or health care operations. We do not otherwise sell, share, rent or disclose personal information collected from our pharmacy pages or maintained in pharmacist records unless you have authorized such disclosure, or such disclosure is permitted or required by law. Additional terms regarding the confidentiality of your prescription information are explained in our confidentiality of personal pharmacy information page located on our [Notice of Privacy Practices: Pharmacies & Health Care Centers](#) and incorporated in this Privacy Policy by this reference. Please review these terms so that you understand how they affect your actions and information.

*Figure 8. Costco's website maintains a backend database in which it stores all its information.*

## A peek under the hood at Costco Auto Program

- A field group constantly researches auto dealers to make sure participating dealers offer the best service and price for each brand in each city.
- The auto program maintains a massive database of car prices and dealer customer-service ratings that is constantly updated to make sure the program has the best possible dealers and the lowest prices.

*Figure 9. Costco's website maintains a backend database in which it stores all its information.*

30. Costco's website performs the step of Claim 13(b): "permitting the user to specify the preference through the workstation and receiving from the workstation a request for the information and an indication of the preference which has been specified by the user through the workstation." For example, Costco's website allows users to select or specify a format in which the information must be presented, such as by selecting Grid or List view upon a search result.

See Figure 10, available at: <https://www.costco.com>; see also Figure 11, available at:

<https://www.costco.com/watches.html>.

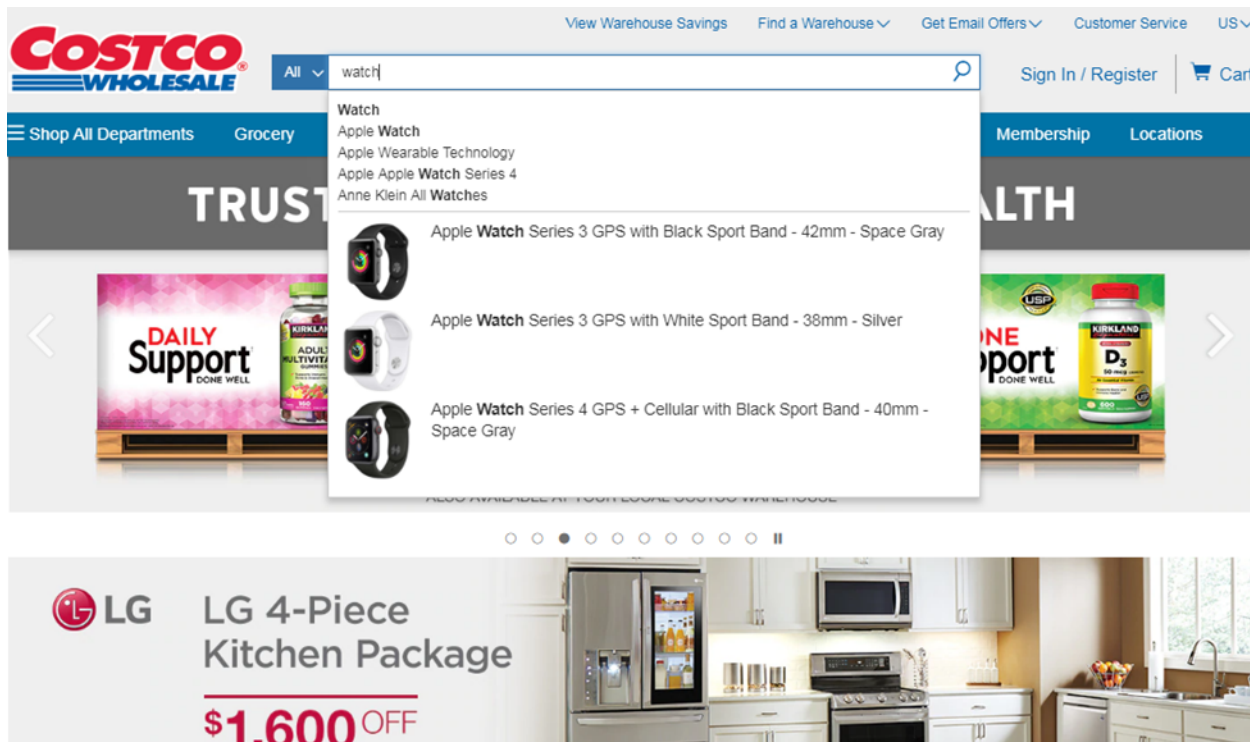


Figure 10. Costco's website allows users to select or specify a format in which the information must be presented.



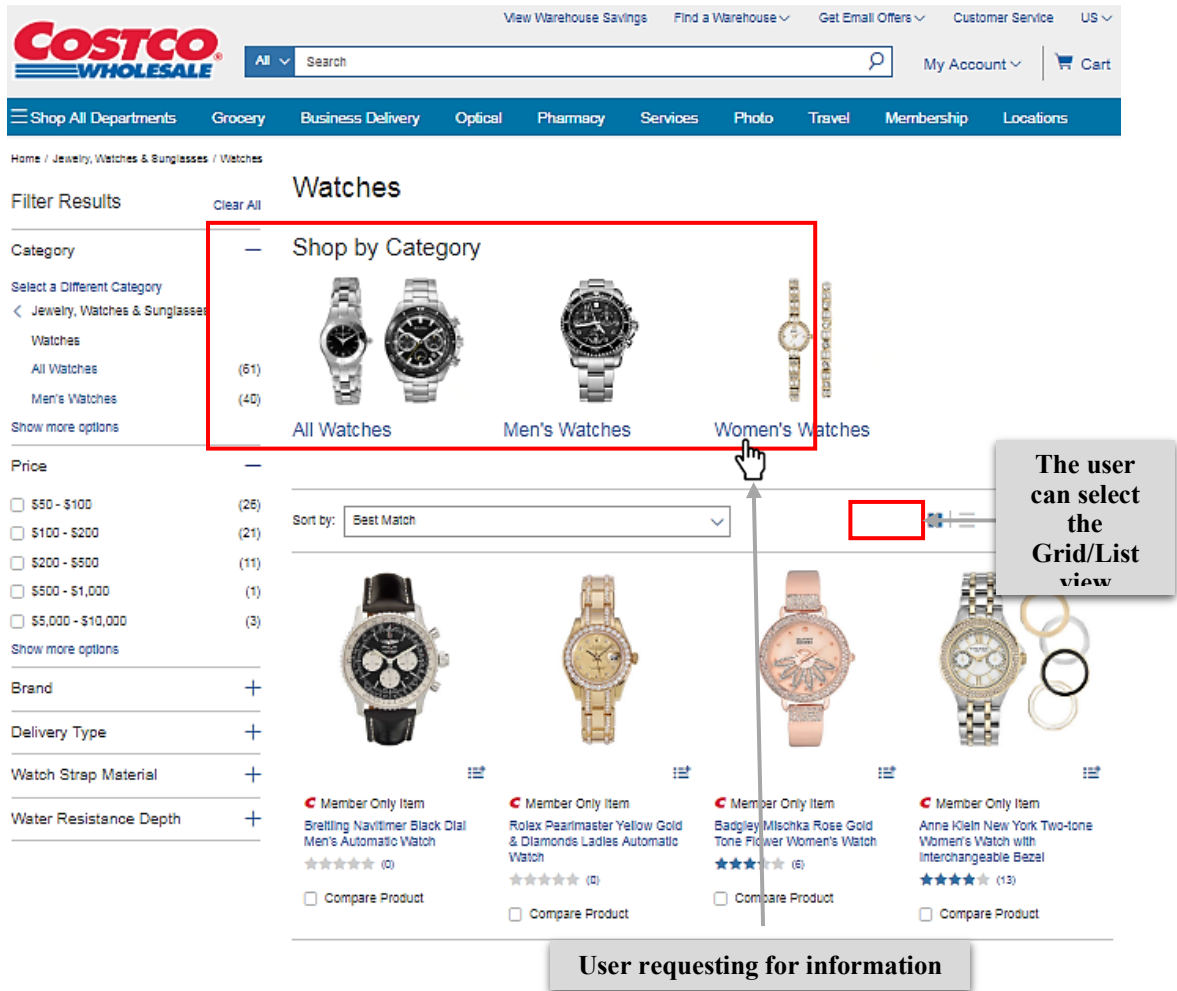


Figure 11. Costco's website allows users to select or specify a format in which the information must be presented.

31. Costco's website performs the step of Claim 13(c): "retrieving the information from a database server." For example, Costco's website displays identified search results from its database when a user enters a search request. See Figure 11; See Figure 12, available at:

<https://www.costco.com/watches.html>.

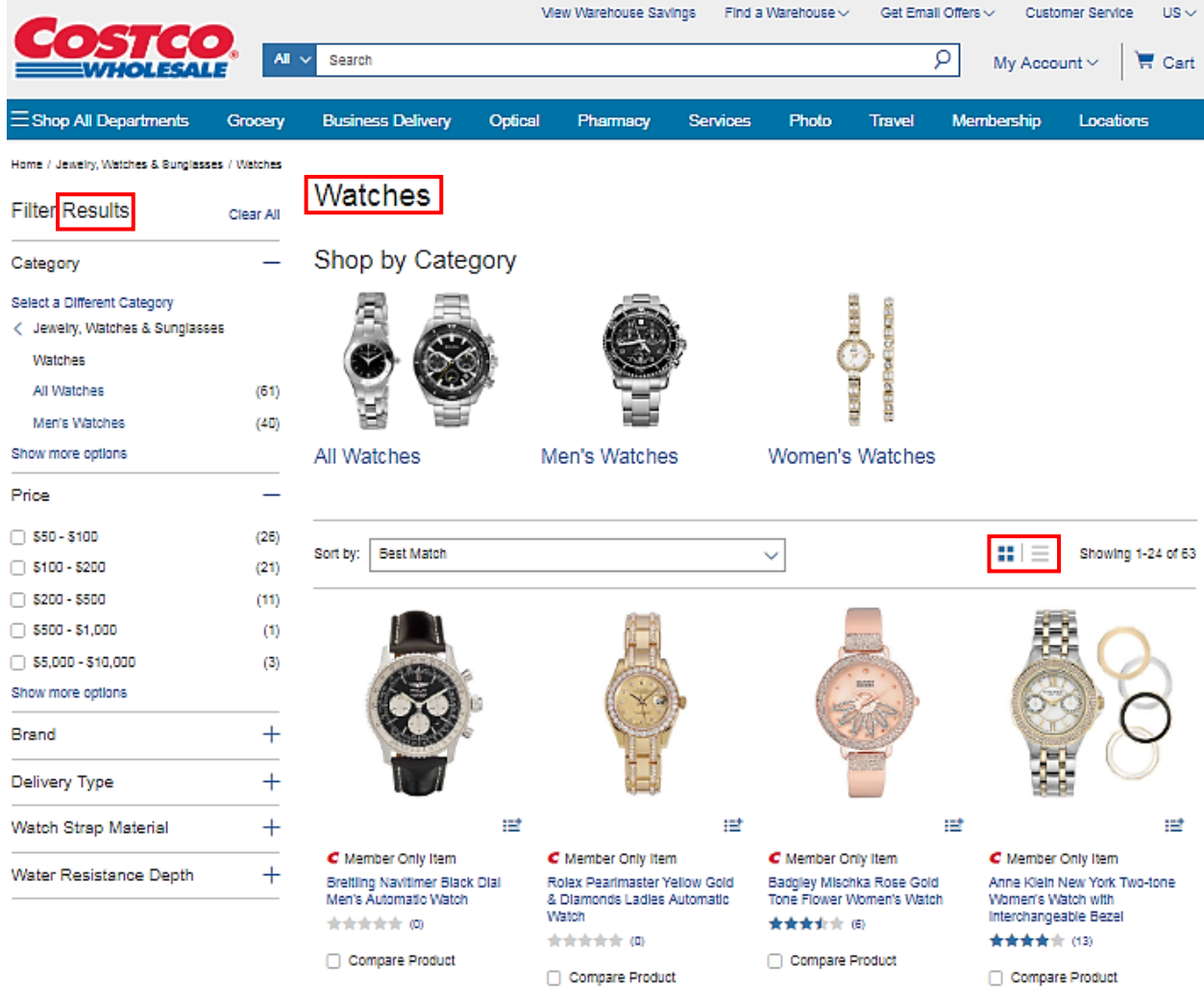


Figure 12. Costco’s website displays identified search results from its database when a user enters a search request.

32. Costco’s website performs the step of Claim 13(d): “dynamically formatting the information in accordance with the preference to form custom-formatted information.” For example, Costco’s website allows users to dynamically format how the information is presented such as by first selecting Grid view, which arranges the identified search results in Grid format, and then selecting the List view, which arranges the results in form of a list. See Figures 13, 14, available at: <https://www.costco.com/watches.html>.



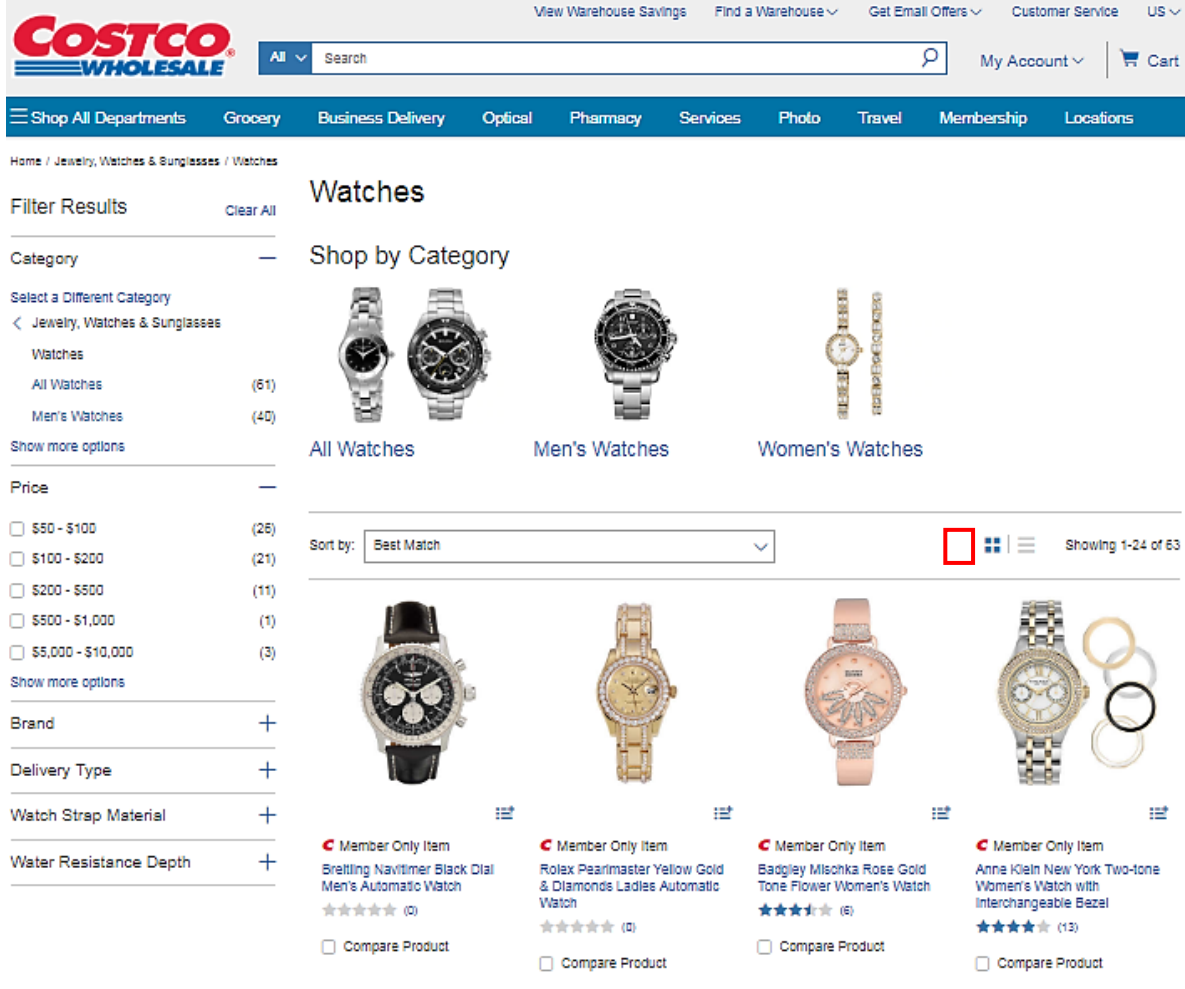


Figure 13. Costco's website allows users to dynamically format how the information is presented (Grid View).

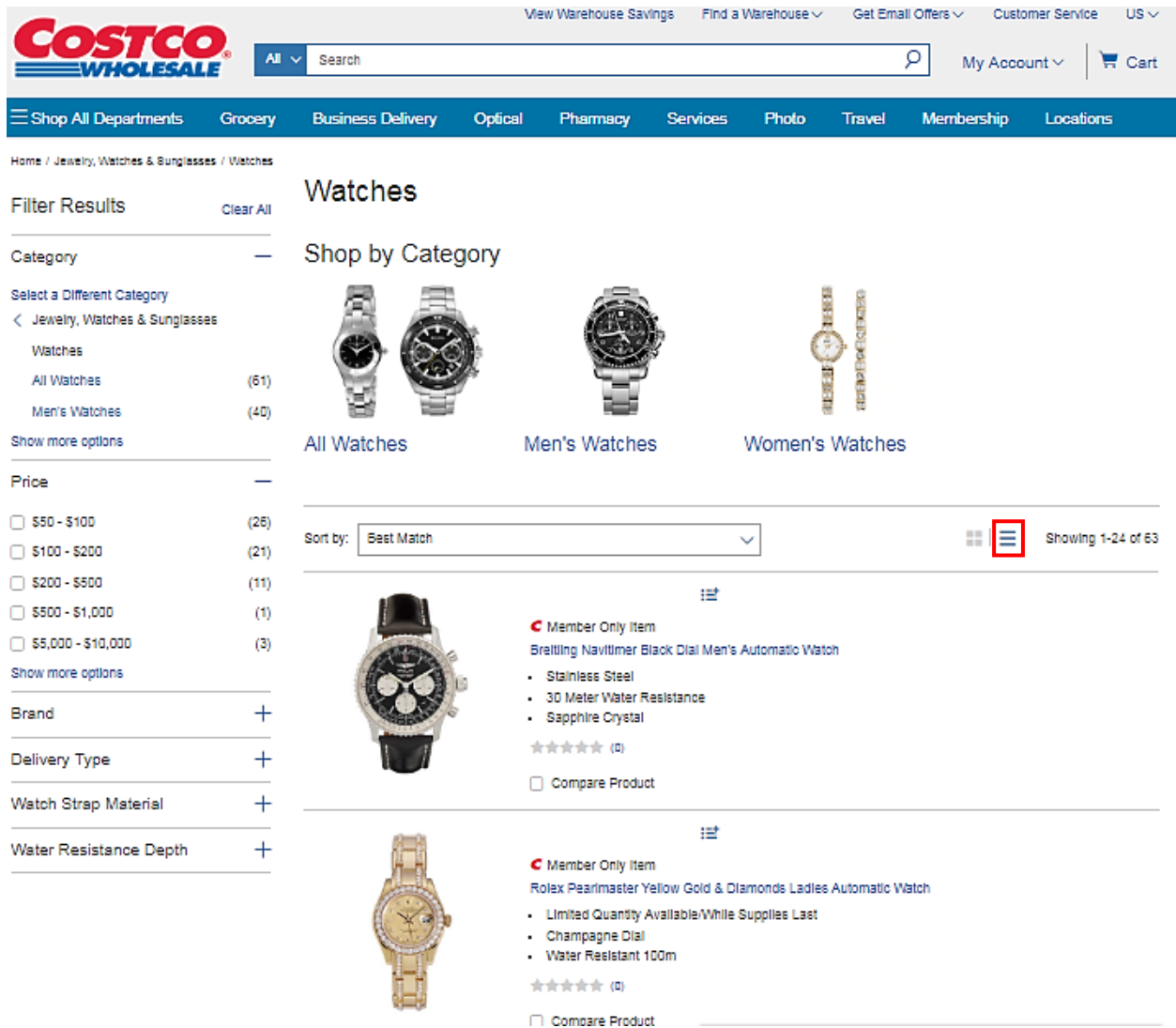


Figure 14. Costco’s website allows users to dynamically format how the information is presented (List View).

33. Costco’s website performs the step of Claim 13(e): “sending the custom-formatted information to the workstation.” For example, Costco’s website displays the updated format of the web page onto the user’s device or web browser. See Figures 13-14.

34. **Induced Infringement.** Costco has also actively induced, and continues to induce, the infringement of at least Claim 13 of the ’094 Patent by actively inducing its customers, including merchants and end-users to use Costco’s website in an infringing manner as described above. Upon information and belief, Costco has specifically intended that its

customers use its website that infringe at least Claim 13 of the '094 Patent by, at a minimum, providing access to support for, training and instructions for, its website to its customers to enable them to infringe at least Claim 13 of the '094 Patent, as described above. Even where performance of the steps required to infringe at least Claim 13 of the '094 Patent is accomplished by Costco and Costco's customer jointly, Costco's actions have solely caused all of the steps to be performed.

35. Flectere is entitled to recover damages adequate to compensate it for such infringement in an amount no less than a reasonable royalty under 35 U.S.C. § 284.

36. Flectere will continue to be injured, and thereby caused irreparable harm, unless and until this Court enters an injunction prohibiting further infringement.

#### **JURY DEMAND**

37. Under Rule 38(b) of the Federal Rules of Civil Procedure, Flectere respectfully requests a trial by jury on all issues so triable.

#### **PRAYER FOR RELIEF**

WHEREFORE, Flectere asks this Court to enter judgment against Costco, granting the following relief:

- A. A declaration that Costco has infringed the Patents-in-Suit;
- B. An award of damages to compensate Flectere for Costco's direct infringement of the Patents-in-Suit;
- C. An order that Costco and its officers, directors, agents, servants, employees, successors, assigns, and all persons in active concert or participation with them, be preliminarily and permanently enjoined from infringing the Patents-in-Suit under 35 U.S.C. § 283;

- D. An award of damages, including trebling of all damages, sufficient to remedy Costco's willful infringement of the Patents-in-Suit under 35 U.S.C. § 284;
- E. A declaration that this case is exceptional, and an award to Flectere of reasonable attorneys' fees, expenses and costs under 35 U.S.C. § 285;
- F. An award of prejudgment and post-judgment interest; and
- G. Such other relief as this Court or jury may deem proper and just.

Dated: January 18, 2019

Respectfully submitted,

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