IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JODI A. SCHWENDIMANN, f/k/a JODI A. DALVEY, an Individual and NUCOAT, Inc., a Minnesota corporation, Plaintiffs v. NEENAH, INC., a Delaware corporation, and AVERY PRODUCTS CORPORATION, a Delaware corporation, Defendants.	Civil Action No. 1:19-cv-00361-LPS **SECOND AMENDED COMPLAINT (PATENT INFRINGEMENT)** **JURY TRIAL DEMANDED**

SECOND AMENDED COMPLAINT

Plaintiffs Jodi A. Schwendimann, f/k/a Jodi A. Dalvey ("Schwendimann") and NuCoat, Inc. ("NuCoat," collectively with Schwendimann, "Plaintiffs"), by and through undersigned counsel Berger Harris LLP, bring this action for patent infringement against Defendant Neenah, Inc. and Defendant Avery Products Corporation, and in support thereof allege as follows:

SUMMARY OF THE ACTION

1. Defendant Neenah, Inc. ("Neenah") has engaged in the business of producing, selling and/or distributing image transfer papers or sheets in and outside the United States, including the allegedly infringing products accused in this lawsuit, under its own brands and under private-label brands of Avery Products Corporation ("Avery," collectively with Neenah, "Defendants") and other companies. Avery has engaged in the business of producing, selling and/or distributing image transfer papers or sheets in and outside the United States, including the allegedly infringing products accused in this lawsuit. As a result of Defendants' patent infringement, Defendants have caused Plaintiffs monetary damages in excess of $75,000.00.

THE PARTIES

2. Plaintiff Jodi A. Schwendimann is an individual and a resident of Hennepin County, Minnesota.

3. Plaintiff NuCoat is a Minnesota corporation with its principal place of business at 13055 15th Ave. N., Plymouth, Minnesota, 55441. NuCoat is in the business of manufacturing and selling specialty paper products, including products that enable its customers to transfer images to T-shirts, sweatshirts, and other garments.

4. Neenah is a corporation organized under the laws of the State of Delaware with headquarters located at Preston Ridge III, 3460 Preston Ridge Road, Suite 600, Alpharetta, Georgia 30005. Neenah may be served with process via its registered agent: The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, Delaware 19801.

5. Avery is a corporation organized under the laws of the State of Delaware with headquarters located at 50 Pointe Drive, in Brea, California 92821. Avery may be served with process via its registered agent: Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808.

6. Joinder of these Defendants is proper pursuant to 35 U.S.C. § 299(a) because Plaintiffs' claims of patent infringement arise in part out of the same transaction, occurrence, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, and selling of the same accused products, and questions of fact common to both Defendants will arise in this action.

JURISDICTION AND VENUE

7. This is an action for patent infringement arising under the Patent Act of the United States, 35 U.S.C. § 1 *et seq.*

8. This Court has original and exclusive jurisdiction of this action under 28 U.S.C. §§

1331 and 1338(a). This Court also has original jurisdiction under 28 U.S.C. § 1332 because the amount in controversy exceeds $75,000, and this action is between citizens of different states.

9. This Court may exercise personal jurisdiction over Defendants for at least the following reasons: (1) Defendants are incorporated and organized under the laws of the State of Delaware; (2) Defendants have manufactured, offered for sale, and/or sold products within the State of Delaware that infringe patents owned by Schwendimann; and (3) Defendants have purposefully established systematic and continuous contacts with this District and should reasonably expect to be brought into court here. Defendants are therefore subject to the jurisdiction of this Court.

10. Venue is proper in this district under 28 U.S.C. § 1391 (b) and (c), at least because a substantial part of the events giving rise to the claim occurred in this district and under 28 U.S.C. § 1400(b) because Defendants "reside" in Delaware. Venue is also proper because Defendants are incorporated and organized under the laws of the State of Delaware and are subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

I. THE FABRIC TRANSFER INDUSTRY.

11. Printed T-shirts, sweatshirts, hats, and other garments are an important part of everyday life. Printed clothing fills modern closets, and printed clothing likewise fills the shelves at national retailers. Consumers buy printed T-shirts and sweatshirts to show support for their hometown football and baseball teams, their high schools and colleges, and their hobbies and interests.

12. There is a large retail market for selling transfer products to "do it yourself" ("DIY") hobbyists that print images using inkjet or laser printers and transfer the images using household irons. Because the transfers allow for customization, crafters use iron-on transfers in a

variety of ways. For example, crafters may transfer a family name onto a pillow, transfer a school logo onto a baseball cap, or transfer artwork onto a tote bag.

13. The same chemistry is used when a retailer like Target orders thousands of shirts with the logo of the local NFL, MLB, or NBA team. The ***transfer paper***, which has the special chemicals that bond the image to the fabric, simply comes on larger rolls, instead of being sold in single sheets. Household printers are replaced by commercial wide-format printers.

II. CHALLENGES WITH TRANSFERRING IMAGES ONTO DARK FABRICS.

14. Prior to the launch of desk top digital printers, most images were applied to customizing apparel and other fabric using screen printing. The launch of digital printing sparked the innovation of technology that allowed users to digitally print images onto coated paper and then transfer those images onto fabric using an iron. The part of the transfer sheet that was ironed onto the fabric was transparent, such that only the printed image would be visible after transfer.

15. The earliest transfers were best suited for transferring images onto light-colored fabrics.[1] This is because, although these same transfers could be used to transfer images onto dark fabrics, there were problems with using them to transfer images onto dark fabric. One problem was that the early digital printers and the home desk top digital printers did not print white ink; thus, it was impossible to get the color white to appear on the dark fabric. In addition, the colors of the printed image would blend into the dark fabric, making the image less clear.

16. To solve these issues associated with transferring images onto dark fabric, both clothing manufacturers and at-home users would use a two-step process to transfer images onto dark fabric. First, they would transfer a plain, white background onto the dark T-shirt. Second,

[1] The term "light fabric" means white and near-white fabrics. The term "dark fabric" means all fabric colors except for white and near-white fabrics.

they would transfer the desired artwork onto that white background. That approach, however, created both manufacturing problems and product quality problems.

17. Using the two-step approach, the manufacturer would first transfer a white background onto the fabric and would then transfer the decorative image onto that white background. The white background could be a simple white rectangle, or it could be cut into the shape of the final image.

18. There were five problems with this two-step approach to transferring images on dark fabric. First, the use of two sheets was not aesthetically pleasing to the consumer. There were alignment problems, giving the finished garment a low-quality appearance.

19. Second, the two-step process required extra labor. Manufacturers and at-home users could transfer an image onto light T-shirts by transferring the artwork in a single step, but transferring images onto dark T-shirts required the extra step of first transferring the plain white background and then transferring the image.

20. Third, the images appearing on dark fabrics were not as sharp and clear as images appearing on light fabrics.

21. Fourth, the white layer made the shirts and other garments rigid and inflexible, causing them to be uncomfortable.

22. Fifth, the white background substrate did not bond to the fabric very well, so pieces of that substrate would start to peel off after a few washings.

23. The technology at issue in this litigation solves the unique problems of transferring images onto dark fabric.

III. ENTREPRENEUR JODI SCHWENDIMANN

24. Plaintiff Jodi Schwendimann grew up in Wisconsin. She began learning about business and accounting at a young age through her family trucking business, which she began

helping with at age eight. She earned her high school diploma. After high school, she began working at a community bank, where she learned about small businesses. She continued to learn how entrepreneurs identify opportunities, and how they build profitable businesses to capitalize on those opportunities.

25. Later, Schwendimann joined one of those growing small businesses, a paper coating company called American Coating Technologies ("American Coating"). She worked directly for the founder of the company, Bill Nasser, learning everything she could about paper coatings. She learned about the market for coated papers. She learned about which products sell, which do not, and why. She continued to learn about product pricing, profit margins, and the economics of launching new products.

26. One of the paper coating products that American Coating sold was paper for Hewlett-Packard desk top inkjet printers. The introduction of desk top digital printing meant that more users were digitally printing images from their home computers for the first time. Schwendimann and Nasser realized this opened the opportunity for an alternative to screen printing onto fabric.

27. Applying what they knew about paper coatings, Schwendimann and Nasser developed technologies for transfer products made for light fabrics. In fact, they obtained several patents for their innovations in the area of light fabric transfers.

28. Schwendimann and Nasser understood the value of developing a superior process for printing images onto dark fabric, but it was a harder problem to solve.

29. Overcoming many challenges, Schwendimann and Nasser developed a revolutionary new technique for transferring images to dark fabrics.

30. Their innovative technology incorporated a white layer into **the same** transfer sheet

onto which the image was printed, thus allowing the manufacturer to apply the image onto the dark fabric in a single step.

31. This new technology addressed all five problems that plagued the old process. The new approach reduced the cost of manufacturing by replacing a two-step process with a one-step process. As a result, the new technology eliminated the problem of aligning the white background with the image. A manufacturer could cut out the image on a single transfer sheet (containing both the white background and the image) before transferring. The printed image was sharp and clear. The garment was flexible and comfortable. The image adhered to the shirt, wash after wash.

32. Their innovation was also a game-changer in the home hobbyist market. Because the chemistry necessary to transfer an image onto a dark fabric could now be built into a single transfer sheet, a home hobbyist could use Schwendimann's invention to easily print an image onto transfer paper using their own inkjet or laser printer, and then transfer that image with a home iron. At home customization of dark shirts was suddenly within reach of home hobbyists.

33. Schwendimann and Nasser were granted several patents for their innovative dark fabric transfers. These patents are the subject of this Complaint. The patents cover the specialty transfer paper that is coated with layers of different chemicals, as well as the methods for transferring an image printed on this paper onto a dark fabric.

34. Schwendimann eventually started her own company, NuCoat, which began selling formulated specialty coatings to the paper industry.

35. American Coating eventually went out of business, and Schwendimann acquired the rights to the dark fabric transfer patents she had developed at American Coating. Today, Schwendimann employs 19 people and brings in millions of dollars in revenue each year. Unfortunately, due to blatant and willful infringement of her patents by Neenah and Avery,

NuCoat unfairly lost significant additional sales. Schwendimann and NuCoat bring this lawsuit to remedy that wrong.

IV. SCHWENDIMANN'S ASSERTED PATENTS

36. Schwendimann owns U.S. Patent No. RE41,623 (the "'623 Reissue Patent"), issued on or about September 7, 2010. The '623 Reissue Patent is a reissue of U.S. Patent No. 6,884,311 (the "'311 Patent"), entitled "Method of Image Transfer on A Colored Base," which was filed on April 3, 2000, and issued on April 26, 2005. Copies of the '623 Reissue Patent and the '311 Patent are attached hereto as Exhibit A and Exhibit B.

37. Schwendimann owns U.S. Patent No. 7,749,581, entitled "Image Transfer on a Colored Base," issued July 6, 2010 (the "'581 Patent"). A copy of the '581 Patent is attached hereto as Exhibit C.

38. Schwendimann owns U.S. Patent No. 7,754,042, entitled "Method of Image Transfer on a Colored Base," issued July 13, 2010 (the "'042 Patent"). A copy of the '042 Patent is attached hereto as Exhibit D.

39. Schwendimann owns U.S. Patent No. 7,771,554, entitled "Image Transfer on a Colored Base," issued August 10, 2010 (the "'554 Patent"). A copy of the '554 Patent is attached hereto as Exhibit E.

40. Schwendimann owns U.S. Patent No. 7,766,475, entitled "Image Transfer on a Colored Base," issued August 3, 2010 (the "'475 Patent"). A copy of the '475 Patent is attached hereto as Exhibit F.

41. Collectively, the '623 Patent, '581 Patent, '042 Patent, '554 Patent, and '475 Patents are referred to as "Patents-in-Suit."

V. PLAINTIFFS' SALES OF COVERED PRODUCT.

42. In the late 1990s, Schwendimann and Bill Nasser began selling their transfer paper products through Nasser's company, American Coating. Schwendimann was American Coating's top salesperson.

43. NuCoat has had an exclusive license to Schwendimann's patents from December 31, 2012, through the present. During this period, NuCoat has practiced the inventions described and claimed in Schwendimann's patents by manufacturing and selling these innovative image transfer sheets.

44. NuCoat's customers have included a number of significant players in the industry. Other potential customers have turned to competitors like Neenah and Avery that are selling infringing products.

VI. NEENAH'S INFRINGING ACTIVITIES

45. Neenah has competed, and continues to compete, directly with NuCoat in the sales of dark fabric transfer products.

46. As alleged in more detail in Plaintiffs' initial claim chart, Neenah has manufactured, offered for sale, and sold the Jet-Opaque II (9754PO) product, which Avery has offered for sale and has sold as Avery Dark Fabric Transfer Nos. 3279, 4384, and 4385, and which (1) infringed Claim 6, 7, 9, 13, and 14 of the '623 Patent; Claims 1-5, 8-12, 16-20, and 24-26 of the '581 Patent; Claims 1-2, 6, and 8 of the '042 Patent; Claims 13, 16, and 18 of the '475 Patent; and (2) indirectly infringed Claims 1, 2, 3 and 5 of the '623 Patent; Claim 16 and 18-22 of the '042 Patent.

47. As alleged in more detail in Plaintiffs' initial claim chart, Neenah has manufactured, offered for sale, and sold the 3G Jet Opaque Product (9838PO) product, which (1) infringed Claim 6, 9, 13, and 14 of the '623 Patent; Claims 1-5, 8-12, 16-20, 24-27, and 30 of the '581 Patent; claims 1-2 and 6-8 of the '042 Patent; Claims 13, 15-16, and 18 of the '475 Patent;

and Claim 6 and 9-14 of the '554 Patent; and (2) indirectly infringed Claims 1, 2, 3, and 5 of the '623 Patent; Claims 16 and 18-22 of the '042 Patent; and Claim 1-5 of the '554 Patent.

48. As alleged in more detail in Plaintiffs' initial claim chart, Neenah has manufactured, offered for sale, and sold the Neenah Laser-1-Opaque (9753PO) product, which (1) infringed Claims 6-7 and 14 of the '623 Patent; Claims 1-5, 8-12, 16-20, and 24-26 of the '581 Patent; Claims 1-2 and 8 of the '042 Patent; and (2) indirectly infringed Claims 1-5 of the '623 Patent and Claims 16 and 18-21 of the '042 Patent.

49. The 9754PO product, 9838PO product, and 9753PO product shall be referred to as the "Neenah Accused Products." A copy of information on the Neenah Accused Products is attached hereto as Exhibit G.

50. The 9754PO product is an image transfer article.

51. The 9754PO product is an image transfer sheet.

52. The 9754PO product has a layer that receives an image.

53. The 9754PO product has a backing paper that is removable.

54. The removable substrate of the 9754PO product includes a release coating.

55. The 9754PO product has a white layer.

56. The white layer in the 9754PO product is disposed between the indicia-receptive layer and the release coating.

57. The white layer in the 9754PO product has a white pigment.

58. The 9754PO product contains white pigment.

59. The white layer in the 9754PO product is concurrently transferable with received indicia upon, and following, application of heat.

60. The backing paper on the 9754PO product has a colored grid.

61. The backing on the 9754PO product is paper.

62. The 9754PO product has a release layer.

63. The release layer of the 9754PO product is on top of the backing paper.

64. The release layer of the 9754PO product is impregnated with titanium oxide or other white pigment.

65. The 9754PO product has a polymer layer.

66. The release layer of the 9754PO product has an image-imparting layer.

67. The image-imparting layer of the 9754PO product contains a polymer.

68. The 9754PO product contains a polymer.

69. Neenah instructs users of the 9754PO product on how to use the product to transfer an image to colored materials.

70. Neenah instructs users of the 9754PO product that the product may be used to transfer an image onto colored fabric.

71. Neenah instructs users of the 9754PO product that the product may be used to transfer an image onto black fabric.

72. Neenah instructs users of the 9754PO product that the product may be used to transfer an image onto colored garments.

73. Neenah instructs users of the 9754PO product on how to print a design onto the product.

74. Neenah instructs users of the 9754PO product to peel away the paper backing.

75. After Neenah instructs users of the 9754PO product to, after peeling away the backing paper, place transfer design face up on garment.

76. Neenah instructs users of the 9754PO product to apply heat to the remaining portions of the image transfer sheet after peeling away the backing paper.

77. When users follow the instructions provided by Neenah for the 9754PO product, the image is transferred to the colored fabric or garment.

78. When users follow the instructions provided by Neenah for the 9754PO product, both the image and the substantially white background are transferred.

79. When users follow the instructions provided by Neenah for the 9754PO product, the polymer of the image-imparting layer encapsulates the white pigment and indicia and transfers the white pigment in a pattern that forms the indicia on the colored fabric.

80. The 9754PO product has an image-imparting member.

81. The 9754PO product has at least one surface configured to receive and carry indicia to be transferred.

82. The 9754PO product has at least one portion with a pigment.

83. The 9754PO product has pigment in a concentration or configuration to provide an opaque background for the image.

84. The opaque background of the 9754PO product has a substantially non-transparent effect.

85. The opaque background of the 9754PO product allows the image to be visible when transferred to a dark-colored base.

86. The 9754PO product has backing paper disposed adjacent, and underlying, the image-imparting member.

87. The backing paper of the 9754PO product is coated with at least one of silicone, clay, resin, fluorocarbon, urethane, or an acrylic base polymer.

88. Neenah makes the 9754PO product.

89. To make the 9754PO product, Neenah obtains a backing paper.

90. To make the 9754PO product, Neenah coats the removable substrate with at least one of silicone, clay, resin, fluorocarbon, urethane, or an acrylic base polymer.

91. To make the 9754PO product, Neenah uses one or more polymer layers.

92. One or more of the polymer layers in the 9754PO product has a pigment that provides an opaque background.

93. The backing paper of the 9754PO product is coated.

94. To make the 9754PO product, Neenah coats the removable substrate with one or more polymers.

95. To make the 9754PO product, Neenah combines at least one of the one or more polymers with titanium oxide or other white or luminescent pigment.

96. To make the 9754PO product, Neenah coats the one or more polymers with an ink receptive layer.

97. The 9754PO product is printable by inkjet printers.

98. The 9754PO product can be used to transfer an image to a fabric.

99. The 9754PO product has an opaque white layer overlaying the backing paper.

100. The opaque white layer of the 9754PO product contains a binder.

101. The opaque white layer of the 9754PO product contains white pigment.

102. The 9754PO product has at least one ink-receptive layer overlaying the opaque white layer.

103. The ink-receptive layer of the 9754PO product contains a binder.

104. The ink-receptive layer of the 9754PO product contains a polymeric material.

105. The 9838PO product is an image transfer article.

106. The 9838PO product is an image transfer sheet.

107. The 9838PO product has a layer that receives an image.

108. The 9838PO product has a backing paper that is removable.

109. The removable substrate of the 9838PO product includes a release coating.

110. The 9838PO product has a white layer.

111. The white layer in the 9838PO product is disposed between the indicia-receptive layer and the release coating.

112. The white layer in the 9838PO product has a white pigment.

113. The 9838PO product contains white pigment.

114. The white layer in the 9838PO product is concurrently transferable with received indicia upon, and following, application of heat.

115. The backing paper on the 9838PO product has a colored grid.

116. The backing paper on the 9838PO product has black or gray colored writing.

117. The backing on the 9838PO product is paper.

118. The 9838PO product has a release layer.

119. The release layer of the 9838PO product is on top of the backing paper.

120. The release layer of the 9838PO product is impregnated with titanium oxide or other white pigment.

121. The 9838PO product has a polymer layer.

122. The release layer of the 9838PO product has an image-imparting layer.

123. The image-imparting layer of the 9838PO product contains a polymer.

124. The 9838PO product contains a polymer.

125. Neenah instructs users of the 9838PO product on how to use the product to transfer an image to colored materials.

126. Neenah instructs users of the 9838PO product that the product may be used to transfer an image onto colored fabric.

127. Neenah instructs users of the 9838PO product that the product may be used to transfer an image onto black fabric.

128. Neenah instructs users of the 9838PO product that the product may be used to transfer an image onto colored garments.

129. Neenah instructs users of the 9838PO product on how to print a design onto the product.

130. Neenah instructs users of the 9838PO product to peel away the paper backing.

131. Neenah instructs users of the 9838PO product to, after peeling away the backing paper, place transfer design face up on garment.

132. Neenah instructs users of the 9838PO product to apply heat to the remaining portions of the image transfer sheet after peeling away the backing paper.

133. When users follow the instructions provided by Neenah for the 9838PO product, the image is transferred to the colored fabric or garment.

134. When users follow the instructions provided by Neenah for the 9838PO product, both the image and the substantially white background are transferred.

135. When users follow the instructions provided by Neenah for the 9838PO product, the polymer of the image-imparting layer encapsulates the white pigment and indicia and transfers the white pigment in a pattern that forms the indicia on the colored fabric.

136. The 9838PO product has an image-imparting member.

137. The 9838PO product has at least one surface configured to receive and carry indicia to be transferred.

138. The 9838PO product has an ink receptive portion.

139. The 9838PO product has at least one portion with a pigment.

140. The 9838PO product contains titanium oxide or white pigment.

141. The 9838PO product contains an EAA resin.

142. The 9838PO product has a silicone release coating.

143. The 9838PO product has pigment in a concentration or configuration to provide an opaque background for the image.

144. The opaque background of the 9838PO product has a substantially non-transparent effect.

145. The opaque background of the 9838PO product allows the image to be visible when transferred to a dark-colored base.

146. The 9838PO product has backing paper disposed adjacent, and underlying, the image-imparting member.

147. The backing paper of the 9838PO product is coated with at least one of silicone, clay, resin, fluorocarbon, urethane, or an acrylic base polymer.

148. Neenah makes the 9838PO product.

149. To make the 9838PO product, Neenah obtains a backing paper.

150. To make the 9838PO product, Neenah coats the removable substrate with at least one of silicone, clay, resin, fluorocarbon, urethane, or an acrylic base polymer.

151. To make the 9838PO product, Neenah uses one or more polymer layers.

152. One or more of the polymer layers in the 9838PO product has a pigment that provides an opaque background.

153. The backing paper of the 9838PO product is coated.

154. To make the 9838PO product, Neenah coats the removable substrate with one or more polymers.

155. To make the 9838PO product, Neenah combines at least one of the one or more polymers with titanium oxide or other white or luminescent pigment.

156. To make the 9838PO product, Neenah coats the one or more polymers with an ink receptive layer.

157. The 9838PO product is printable by inkjet printers.

158. The 9838PO product can be used to transfer an image to a fabric.

159. The 9838PO product has an opaque white layer overlaying the backing paper.

160. The opaque white layer of the 9838PO product contains a binder.

161. The opaque white layer of the 9838PO product contains white pigment.

162. The 9838PO product has at least one ink-receptive layer overlaying the opaque white layer.

163. The ink-receptive layer of the 9838PO product contains a binder.

164. The ink-receptive layer of the 9838PO product contains a polymeric material.

165. The 9753PO product is an image transfer sheet.

166. The 9753PO product has a backing paper that is removable.

167. The backing paper on the 9753PO product has green colored writing.

168. The backing on the 9753PO product is paper.

169. The 9753PO product has a release layer.

170. The release layer of the 9753PO product is on top of the backing paper.

171. The release layer of the 9753PO product is impregnated with titanium oxide or other white pigment.

172. The 9753PO product has a polymer layer.

173. The 9753PO product is an image transfer article.

174. The 9753PO product has a layer that receives an image.

175. The 9753PO product has a surface configured to receive and carry indicia to be transferred.

176. The removable substrate of the 9753PO product includes a release coating.

177. The 9753PO product has a white layer.

178. The white layer in the 9753PO product is disposed between the indicia-receptive layer and the release coating.

179. The white layer in the 9753PO product has a white pigment.

180. The 9753PO product contains white pigment.

181. The white pigment in the 9753PO product provides a substantially opaque, non-transparent background for received indicia.

182. The white layer in the 9753PO product is concurrently transferable with received indicia upon, and following, application of heat.

183. Neenah makes the 9753PO product.

184. To make the 9753PO product, Neenah obtains a backing paper.

185. To make the 9753PO product, Neenah coats the removable substrate with at least one of silicone, clay, resin, fluorocarbon, urethane, or an acrylic base polymer.

186. To make the 9753PO product, Neenah uses one or more polymer layers.

187. One or more of the polymer layers in the 9753PO product has a pigment that provides an opaque background.

188. To make the 9753PO product, Neenah coats the removable substrate with one or more polymers.

189. To make the 9753PO product, Neenah combines at least one of the one or more polymers with titanium oxide or other white pigment.

190. Upon information and belief, Neenah had actual knowledge of the Patents-in-Suit, but nonetheless made and continued to make, use, sell, and/or offer to sell their infringing products.

191. For example, in or around March 1999, Schwendimann and Bill Nasser visited Arkwright, Inc. in Rhode Island. During that meeting, Schwendimann told Bob Conforti about her dark fabric transfer products.

192. At the time of the transaction in which Arkwright, Inc.'s asserts were acquired, Conforti – the head of research and development – was aware there was a claim of infringement by Schwendimann involving her dark fabric patents.

193. Conforti was involved in the Interference Proceedings involving the Patents-in-Suit.

194. Conforti now serves as Neenah's Vice President for New Business & Technology Development.

195. Despite Neenah's longstanding knowledge of Schwendimann's patents and products, Neenah has never entered into a license agreement with Schwendimann relating to her dark fabric transfer patents or ceased sales of dark fabric transfer products. Instead, Neenah continued selling infringing product.

VII. AVERY'S INFRINGING ACTIVITIES

196. Avery has competed, and continues to compete, directly with NuCoat in the sales

of dark fabric transfer products.

197. As set forth in more detail in Plaintiffs' initial claim chart, Defendant Avery has made, used, sold, and/or offered for sale image transfer sheets, and potentially other products, which (1) infringed Claim 6, 7, 9, 13, and 14 of the '623 Patent; Claims 1-5, 8-12, 16-20, and 24-26 of the '581 Patent; Claims 13, 16, and 18 of the '475 Patent; and (2) indirectly infringed Claims 1, 2, 3 and 5 of the '623 Patent and Claim 16 and 18-22 of the '042 Patent , including, but not limited to Avery Dark Fabric Transfers #3279, #4384, and #4385 (the "Avery Accused Products"). A copy of information on Avery's #3279 product is attached hereto as Exhibit H.

198. The #4384 and #4385 products have the same composition as the #3279 product.

199. The Avery Accused Products were manufactured by Neenah.

200. Each of the Avery Accused Products is an image transfer article.

201. Each of the Avery Accused Products is an image transfer sheet.

202. Each of the Avery Accused Products has a layer that receives an image.

203. Each of the Avery Accused Products has a backing paper that is removable.

204. The removable substrate of each of the Avery Accused Products includes a release coating.

205. Each of the Avery Accused Products has a white layer.

206. The white layer in each of the Avery Accused Products is disposed between the indicia-receptive layer and the release coating.

207. The white layer in each of the Avery Accused Products has a white pigment.

208. Each of the Avery Accused Products contains white pigment.

209. The white layer in each of the Avery Accused Products is concurrently transferable with received indicia upon, and following, application of heat.

210. The backing paper on each of the Avery Accused Products is white with gray colored writing and logo.

211. The backing on each of the Avery Accused Products is paper.

212. Each of the Avery Accused Products has a release layer.

213. The release layer of each of the Avery Accused Products is on top of the backing paper.

214. The release layer of each of the Avery Accused Products is impregnated with titanium oxide or other white pigment.

215. Each of the Avery Accused Products has a polymer layer.

216. The release layer of each of the Avery Accused Products has an image-imparting layer.

217. The image-imparting layer of each of the Avery Accused Products contains a polymer.

218. Each of the Avery Accused Products contains a polymer.

219. Avery instructs users of each of the Avery Accused Products on how to use the product to transfer an image to colored materials.

220. Avery instructs users of each of the Avery Accused Products that the product may be used to transfer an image onto colored fabric.

221. Avery instructs users of each of the Avery Accused Products that the product may be used to transfer an image onto black fabric.

222. Avery instructs users of each of the Avery Accused Products that the product may be used to transfer an image onto colored garments.

223. Avery instructs users of each of the Avery Accused Products on how to print a design onto the product.

224. Avery instructs users of each of the Avery Accused Products to peel away the paper backing.

225. After Avery instructs users of each of the Avery Accused Products to, after peeling away the backing paper, place transfer design face up on garment.

226. Avery instructs users of each of the Avery Accused Products to apply heat to the remaining portions of the image transfer sheet after peeling away the backing paper.

227. When users follow the instructions provided by Avery for each of the Avery Accused Products, the image is transferred to the colored fabric or garment.

228. When users follow the instructions provided by Avery for each of the Avery Accused Products, both the image and the substantially white background are transferred.

229. When users follow the instructions provided by Avery for each of the Avery Accused Products, the polymer of the image-imparting layer encapsulates the white pigment and indicia and transfers the white pigment in a pattern that forms the indicia on the colored fabric.

230. Each of the Avery Accused Products has an image-imparting member.

231. Each of the Avery Accused Products has at least one surface configured to receive and carry indicia to be transferred.

232. Each of the Avery Accused Products has at least one portion with a pigment.

233. Each of the Avery Accused Products has pigment in a concentration or configuration to provide an opaque background for the image.

234. The opaque background of each of the Avery Accused Products has a substantially non-transparent effect.

235. The opaque background of each of the Avery Accused Products allows the image to be visible when transferred to a dark-colored base.

236. Each of the Avery Accused Products has backing paper disposed adjacent, and underlying, the image-imparting member.

237. The backing paper of each of the Avery Accused Products is coated with at least one of silicone, clay, resin, fluorocarbon, urethane, or an acrylic base polymer.

238. One or more of the polymer layers in each of the Avery Accused Products has a pigment that provides an opaque background.

239. The backing paper of each of the Avery Accused Products is coated.

240. Each of the Avery Accused Products is printable by inkjet printers.

241. Each of the Avery Accused Products can be used to transfer an image to a fabric.

242. Each of the Avery Accused Products has an opaque white layer overlaying the backing paper.

243. The opaque white layer of each of the Avery Accused Products contains a binder.

244. The opaque white layer of each of the Avery Accused Products contains white pigment.

245. Each of the Avery Accused Products has at least one ink-receptive layer overlaying the opaque white layer.

246. The ink-receptive layer of each of the Avery Accused Products contains a binder.

247. The ink-receptive layer of each of the Avery Accused Products contains a polymeric material.

248. Upon information and belief, Avery had actual knowledge of the Patents-in-Suit, but nonetheless made and continued to make, use, sell, and/or offer to sell their infringing products.

249. Schwendimann had a relationship with Avery as early as the late 1990s when she launched light fabric transfer products with Avery when she was working for American Coating. Avery's first light transfer product was American Coating's product.

250. Avery also knew about Schwendimann's dark fabric transfer patents and products.

251. For example, in 1999, when she worked for American Coating, Schwendimann marketed a dark t-shirt transfer product to Avery. She provided Avery with samples. However, Avery never purchased dark fabric transfer products from American Coating or from Schwendimann's other companies.

252. Avery also has more recent knowledge of Schwendimann's products and patents. For example, on or around September 20, 2007, Schwendimann sent correspondence to Avery's Ram Santhanam, in which she discussed U.S. Patent No. 6,884,311 (which reissued as U.S. Patent No. RE41,623).

253. In early 2017, Avery and Schwendimann had a meeting to review NuCoat's T-Shirt Transfers, including the dark transfer products. In connection with this meeting, Schwendimann provided Avery with a sample of her dark fabric transfer product. In addition, in connection with those discussions, Schwendimann provided a list of her patents in transfer papers, including some of the dark image transfer patents at issue here.

254. Despite Avery's longstanding knowledge of Schwendimann's patents and products, Avery has never entered into a license agreement with Schwendimann relating to her dark fabric transfer patents or ceased sales of dark fabric transfer products. Instead, Avery continued selling infringing product.

VIII. PLAINTIFFS' DAMAGES

255. As a result of Defendants' marketing and sales of their infringing products, NuCoat lost customers, sales, and profits.

256. NuCoat used Schwendimann's patented invention for dark fabric transfers and, as a result, its dark fabric transfer products had the advantages of the invention.

257. The other major players in this market had product offerings that also infringed Schwendimann's patents. For example, Schwendimann prevailed in litigation against competitor Arkwright Advanced Coating, Inc. in 2017.[2]

258. NuCoat would have been able to meet demand for additional volume through its contract manufacturing relationships, relationships that NuCoat had already put in place due to NuCoat's expectation that its transfer products would be a big success.

259. In sum, as a direct result of Defendants' patent infringement, NuCoat lost significant profits.

260. As to Defendants, Plaintiffs seek monetary damages arising from Defendant's infringement.

261. More specifically, from the period of approximately February 2013, through the present, Plaintiffs are entitled to recover damages from Defendants for infringement of Claims 6, 7, 9, 13, and 14 of the '623 Patent; Claims 1-5, 8-12, 16-20, 24-27, and 30 of the '581 Patent; Claims 1-2 and 6-8 of the '042 Patent; Claims 13, 15-16, and 18 of the '475 Patent; and Claims 6

[2] *See, e.g., Schwendimann v. Arkwright Advanced Coating, Inc.*, No. CV 11-820 (JRT/HB), 2018 WL 3621206, at *1 (D. Minn. July 30, 2018), *reconsideration denied*, No. CV 11-820 (JRT/HB), 2018 WL 4554544 (D. Minn. Sept. 21, 2018) (observing that "[t]he jury returned a verdict in favor of Schwendimann, finding that AACI has directly infringed at least one claim of her patents," and awarded Schwendimann damages, pre-judgment interest, post-judgment interest, and a permanent injunction).

and 9-14 of the '554 Patent.

262. In addition, Defendants induced and/or contributed to, and is inducing and/or contributing to, the infringement of other claims in the Patents-in-Suit, including but not limited to Claims 1-5 of the '623 Patent; Claims16 and 18-22 of the '042 Patent; and/or Claims 1-5 of the '554 Patent.

COUNT I (AGAINST ALL DEFENDANTS)

Infringement of U.S. Patent No. RE41,623, U.S. Patent No. 7,749,581, U.S. Patent No. 7,754,042, U.S. Patent No. 7,771,554, and U.S. Patent No. 7,766,475

263. Plaintiffs incorporate by reference the above paragraphs as if stated herein.

264. The Patents-in-Suit are valid and enforceable.

265. Neenah has infringed at least one claim of the '581 Patent, including, without limitation, Claim 17.

266. Neenah has infringed at least one claim of the '623 Reissue Patent, including, without limitation, Claim 6.

267. Neenah has infringed at least one claim of the '042 Patent, including, without limitation, Claim 1.

268. Neenah has infringed at least one claim of the '554 Patent, including, without limitation, Claim 9.

269. Neenah has infringed at least one claim of the '475 Patent, including, without limitation, Claim 13.

270. Avery has infringed at least one claim of the '581 Patent, including, without limitation, Claim 17.

271. Avery has infringed at least one claim of the '623 Reissue Patent, including, without limitation, Claim 6.

272. Avery has infringed at least one claim of the '475 Patent, including, without limitation, Claim 13.

273. In addition, Defendants induced and/or contributed to the infringement of other claims in the Patents-in-Suit, including but not limited to Claims 1-5 of the '623 Patent; Claims 16 and 18-22 of the '042 Patent; and/or Claims 1-5 of the '554 Patent.

274. Defendants' acts of direct infringement include, but are not limited to, making, using, selling, and/or offering for sale within this District and elsewhere image transfer sheets, and/or other products or methods incorporating Plaintiff's patented transfer sheets or methods for transferring an image as claimed in the above patents.

275. Defendants' acts of inducing and contributory infringement include, but are not limited to, causing end consumers to directly infringe Plaintiff's patents by selling and/or offering for sale image transfer sheets to end consumers with explicit instructions to use the image transfer sheets in a manner that Defendants knew to be infringing.

276. Such illegal patent infringement activities have caused loss and injury to Plaintiffs, for which Plaintiffs are entitled to monetary damages.

277. Upon information and belief, Defendants' infringement was intentional, knowing, willful, deliberate, without license or justification, and with full knowledge of Plaintiff's patent rights.

278. NuCoat offered the only acceptable, non-infringing alternative to Neenah's and Avery's products. Plaintiffs are entitled to recover lost profits on those sales.

279. Because of Defendants' willful conduct, Plaintiffs are entitled to recover three times its damages, as well as lost profits, costs, attorneys' fees and investigative fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. A judgment that Neenah has infringed, induced infringement, and/or contributorily infringed Plaintiff's rights under the '581 Patent; the '623 Reissue Patent; the '042 Patent; the '554 Patent; and the '475 Patent;

2. A judgment that Avery has infringed, induced infringement, and/or contributorily infringed Plaintiff's rights under the '581 Patent, the '623 Reissue Patent, the '042 Patent; and the '475 Patent;

3. A judgment that at least some of Defendants' various acts of infringement have been in willful and in deliberate disregard of Plaintiff's patent rights;

4. A judgment awarding Plaintiffs compensatory and exemplary damages, but not less than a reasonable royalty, including allowance of multiplied damages based on Defendants' willful and deliberate infringement;

5. A judgment awarding Plaintiffs their costs incurred herein, including attorneys' fees for an exceptional case pursuant to 35 U.S.C. § 285; and

6. A judgment awarding Plaintiffs such other and further relief as the Court may deem just and equitable.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a jury trial as to all issues so triable.

Dated: July 1, 2020
Wilmington, Delaware

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