



McElhattan, Pennsylvania; and Defendant First Quality Retail Services, LLC, is a corporation organized and existing under the laws of the State of Delaware with a place of business at Great Neck, New York.

**JURISDICTION AND VENUE**

3. This action is for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

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

5. This Court has personal jurisdiction over Defendants because Defendants have done and are doing business in Texas, and in this judicial district. This Court also has personal jurisdiction over Defendants because, upon information and belief, Defendants offer for sale, sell, distribute, and ship products according to the claims of the patents-in-suit in the Northern District of Texas.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b) because Defendants are doing business in the Northern District of Texas and because, upon information and belief, wrongful acts committed by Defendants have occurred in, and are causing injury to, K-C in the Northern District of Texas.

**COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,496,298**

7. On March 5, 1996, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,496,298 (“the ‘298 patent”) to Rebecca J. Kuepper and Christine A. Rasmussen who assigned to K-C the entire right, title, and interest to the ‘298 patent, including all rights to recover for all infringements thereof. A copy of the ‘298 patent is attached as Exhibit A.

8. Defendants have been infringing and continue to infringe the '298 patent by making, using, offering to sell, selling, and/or importing products that are covered by one or more claims of the '298 patent, including, but not limited to, First Quality's recently introduced diaper product having elastic ears with non-parallel sides for fastening the sides of the diaper ("First Quality's Recently Introduced Diaper Product").

9. Upon information and belief, the first sale of First Quality's Recently Introduced Diaper Product to consumers occurred in February 2009.

10. K-C has been damaged by Defendants' infringement.

11. Furthermore, Defendants' acts of infringement have been without express or implied license by K-C, are in violation of K-C's rights, and will continue unless enjoined by this Court.

12. Upon information and belief, Defendants have continued their infringement in willful disregard of the '298 patent and the rights created thereunder.

13. Upon information and belief, this is an exceptional case because of Defendants' willful infringement.

14. K-C has been and will continue to be irreparably harmed by Defendants' infringement of the '298 patent.

**COUNT II – INFRINGEMENT OF U.S. PATENT NO. 5,286,543**

15. On February 15, 1994, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. <http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=%2Fnethtml%2FPTO%2Fsrchnum.htm&r=1&f=G&l=50&s1=5,286,543.PN.&OS=PN/5,286,543&RS=PN/5,286,543> - [h0#h0http://patft.uspto.gov/netacgi/nph-](http://patft.uspto.gov/netacgi/nph-)

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[h2#h25,286,543](#) (“the ‘543 patent”) to Tanakon Ungpiyakul, Christopher J. Sheleski, Arch D. Morgan, Terry G. Hayes, Gene M. Gregory, and Daniel J. Vander Heiden who assigned to K-C the entire right, title, and interest to the ‘543 patent, including all rights to recover for all infringements thereof. A copy of the ‘543 patent is attached as Exhibit B.

16. Defendants have been infringing and continue to infringe the ‘543 patent by making, using, offering to sell, selling, and/or importing products that are covered by one or more claims of the ‘543 patent, including, but not limited to, First Quality’s Recently Introduced Diaper Product.

17. Upon information and belief, the first sale of First Quality’s Recently Introduced Diaper Product to consumers occurred in February 2009.

18. K-C has been damaged by Defendants’ infringement.

19. Furthermore, Defendants’ acts of infringement have been without express or implied license by K-C, are in violation of K-C’s rights, and will continue unless enjoined by this Court.

20. K-C has been and will continue to be irreparably harmed by Defendants’ infringement of the ‘543 patent.

**COUNT III – INFRINGEMENT OF U.S. PATENT NO. 5,601,542**

21. On February 11, 1997, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,601, 542 (“the ‘542 patent”) to Mark K. Melius, Sandra M. Yarbrough, Melissa C. Putzer, Stanley R. Kellenberger and Shannon K. Byerly who assigned to

K-C the entire right, title, and interest to the '542 patent, including all rights to recover for all infringements thereof. A copy of the '542 patent is attached as Exhibit C.

22. Defendants have been infringing and continue to infringe the '542 patent by making, using, offering to sell, selling, and/or importing products that are covered by one or more claims of the '542 patent, including, but not limited to, Walgreens Certainty Ultra Thin Underwear, Extra Absorbent; Walgreens Certainty Pads, Ultimate Absorbent; Wal-Mart Assurance Underwear for Women, Extra Absorbent; Wal-Mart Assurance Underwear, Super Plus Absorbent; Wal-Mart Assurance Underwear, Overnight Absorbent; and Wal-Mart Assurance Male Guards, Extra Absorbent.

23. K-C has been damaged by Defendants' infringement.

24. Furthermore, Defendants' acts of infringement have been without express or implied license by K-C, are in violation of K-C's rights, and will continue unless enjoined by this Court.

25. K-C has been and will continue to be irreparably harmed by Defendants' infringement of the '542 patent.

**COUNT IV – INFRINGEMENT OF U.S. PATENT NO. 5,147,343**

26. On September 15, 1992, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,147,343 ("the '343 patent") to Stanley R. Kellenberger who assigned to K-C the entire right, title, and interest to the '343 patent, including all rights to recover for all infringements thereof. A copy of the '343 patent is attached as Exhibit D.

27. Defendants have been infringing and continue to infringe the '343 patent by making, using, offering to sell, selling, and/or importing products that are covered by one or more claims of the '343 patent, including, but not limited to, Walgreens Certainty Guards for

Men, Extra Absorbent; and on information and belief, Target Diaper, Walgreens Certainty Pads, Ultimate Absorbent; Wal-Mart Assurance Belted Undergarments, Extra Absorbent; and Wal-Mart Assurance Underwear for Women, Extra Absorbent.

28. K-C has been damaged by Defendants' infringement.

29. Furthermore, Defendants' acts of infringement have been without express or implied license by K-C, are in violation of K-C's rights, and will continue unless enjoined by this Court.

30. K-C has been and will continue to be irreparably harmed by Defendants' infringement of the '343 patent.

**COUNT V – INFRINGEMENT OF U.S. PATENT NO. 6,702,798**

31. On March 9, 2004, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 6,702,798 ("the '798 patent") to Paul William Christoffel, Joel Curtis Krueger, Mark John Jung, Willard Frances Hawley, Jr., Steven Charles Schapel, Mark David Spiegelberg, Jeffery Michael Tabor, Mark Joseph VanGroll, and Mark James VanRossum who assigned to K-C the entire right, title, and interest to the '798 patent, including all rights to recover for all infringements thereof. A copy of the '798 patent is attached as Exhibit E.

32. Defendants have been infringing and continue to infringe the '798 patent by making, using, offering to sell, selling, and/or importing products that are covered by one or more claims of the '798 patent, including, but not limited to, Wal-Mart Assurance Premium Underwear for Women; Walgreens Certainty Extra Absorbency; CVS Protective Underwear, Extra Absorbency; CVS Protective Underwear, Extra Absorbency; and CVS Protective Underwear – Day & Night, Super Plus Absorbency.

33. K-C has been damaged by Defendants' infringement.

34. Furthermore, Defendants' acts of infringement have been without express or implied license by K-C, are in violation of K-C's rights, and will continue unless enjoined by this Court.

35. K-C has been and will continue to be irreparably harmed by Defendants' infringement of the '798 patent.

**JURY DEMAND**

K-C hereby demands a trial by jury on all issues so triable.

**RELIEF SOUGHT**

**WHEREFORE**, K-C prays:

A. For an injunction against further infringement of the '298, '543, '542, '343, and '798 patents by Defendants, their officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with them or controlled by them;

B. For damages to compensate K-C for the infringement of the '298, '543, '542, '343, and '798 patents, together with prejudgment and postjudgment interest;

C. For an assessment of costs against Defendants;

D. For treble damages pursuant to 35 U.S.C. § 284 because, upon information and belief, Defendants' infringement has been willful;

E. For judgment that this is an exceptional case under 35 U.S.C. § 285, and that Defendants shall pay to K-C all its attorneys' fees; and

F. For all such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: March 12, 2009

By: s/ Kevin J. Meek

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