

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION**

Kimberly-Clark Corporation, and	)	
Kimberly-Clark Global Sales, LLC,	)	
	)	
Plaintiffs,	)	Case No. _____
	)	
v.	)	
	)	Jury Trial Demanded
DEB IP, Ltd., and	)	
DEB SBS, Inc.,	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT FOR DECLARATORY JUDGMENT OF NON-INFRINGEMENT  
AND PATENT INVALIDITY AND DEMAND FOR JURY TRIAL**

Plaintiffs, Kimberly-Clark Corporation and Kimberly-Clark Global Sales, LLC (collectively “Kimberly-Clark”), by their attorneys, for their Complaint against Defendants DEB IP, Ltd. and DEB SBS, Inc. (collectively “Defendants”), hereby allege and demand a jury trial as follows:

**THE PARTIES**

1. Kimberly-Clark Corporation and Kimberly-Clark Global Sales, LLC, are both corporations organized and existing under the laws of the State of Delaware, and having principal places of business in Neenah, Wisconsin. Kimberly-Clark Global Sales, LLC, is a wholly-owned subsidiary of Kimberly-Clark Corporation. Kimberly-Clark Corporation and Kimberly-Clark Global Sales, LLC, have manufacturing, research, sales, and/or marketing offices and facilities in Neenah, Wisconsin.

2. Upon information and belief, Defendant DEB IP Ltd. (“DEB IP”) is a company organized and existing under the laws of England having its principal place of business at 108 Spencer Road, Belper, Derbyshire, England, DE56 1JX.

3. Upon information and belief, Defendant DEB SBS, Inc. (“DEB SBS”) is a Delaware corporation having its principal place of business at 100 Highway 27 South, Stanley, North Carolina 28164.

4. Upon information and belief, DEB SBS is in the business of manufacturing and marketing a range of skincare products and solutions, including soap, soap dispensers, and other sanitary cleaning products and equipment, including foam soap based products, with distribution facilities and centers in Wisconsin and this district.

5. Upon information and belief, DEB IP is an affiliate of DEB SBS and owns certain intellectual property, including patents and the right to sue for infringement thereof, to collect damages, and to obtain injunctive relief. Upon information and belief, DEB SBS purports to have the exclusive right to sell within the United States products falling within the scope of specific patents owned by and/or assigned to DEB IP, and the right to claim damages arising from infringement of those patents. DEB IP and DEB SBS have jointly asserted their claimed patent rights in several cases in the federal district courts.

### **JURISDICTION AND VENUE**

6. These claims arise under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

7. This Court has subject matter jurisdiction over this dispute pursuant to Title 35 of the United States Code and 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over Defendants because, upon information and belief, Defendants conduct business in this District. Through their individual and combined

efforts, Defendants have established substantial contacts in the State of Wisconsin, including, upon information and belief, twenty-nine (29) distribution centers, of which twenty-one (21) are in the Eastern District of Wisconsin, through which Defendants offer for sale, distribute and purposefully ship products related to the patents-in-suit.

9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1391(d), 1400(b), 2201, and 2202. Kimberly-Clark's principal place of business is located in the Eastern District of Wisconsin. Upon information and belief, Defendants are also doing business in the Eastern District of Wisconsin and acts committed by Defendants have occurred in, and are causing injury to Plaintiffs in, this district.

#### **FACTUAL ALLEGATIONS**

10. Kimberly-Clark designs, develops, markets, and sells a broad array of innovative consumer and health care products and services. Kimberly-Clark has expended substantial amounts of time, money and resources in the research, development, manufacturing, and sale of its products. As a result of its efforts and expenditures, Kimberly-Clark is an industry leader in developing products, services, and systems in several different markets, including some of the most trusted and recognized brand names.

11. Kimberly-Clark manufactures, markets, and sells foam soap and soap dispensers, including: (1) KIMCARE GENERAL<sup>®</sup> Luxury Foam Skin Cleanser with Moisturizers; (2) KIMCARE GENERAL<sup>®</sup> Luxury Foam Fragrance and Dye Free Skin Cleanser; (3) KIMCARE ANTIBACTERIAL<sup>®</sup> Luxury Foam Antibacterial Skin Cleanser; (4) KIMCARE ANTIBACTERIAL<sup>®</sup> Luxury Foam E-2 Skin Cleanser; (5) KIMCARE<sup>®</sup> Luxury Foam Instant Hand Sanitizer; (6) KIMCARE<sup>®</sup> Luxury Foam Hair & Body Wash; and (7) Kimberly-Clark Professional<sup>®</sup> 1000 mL Skin Care Cassette Dispenser, collectively "the Kimberly-Clark foam soap products."

12. U.S. Patent No. 5,445,288 (“the ‘288 patent”), titled “Liquid Dispenser for Dispensing Foam,” states that it issued August 29, 1995, to named inventor Stewart Banks. A copy of the ‘288 patent is attached as Exhibit A.

13. U.S. Patent No. 6,082,586 (“the ‘586 patent”), titled “Liquid Dispenser for Dispensing Foam,” states that it issued July 4, 2000, to named inventor Stewart Banks. A copy of the ‘586 patent is attached as Exhibit B.

14. On information and belief, the ‘288 patent and the ‘586 patent are assigned to DEB IP and DEB IP is currently the owner of all right, title, and interest in the ‘288 patent and the ‘586 patent.

15. Beginning in or around Thursday, May 1, 2008, Defendants, through their counsel, contacted Kimberly-Clark and stated that Defendants believed Kimberly-Clark’s foam soap products infringed one or more claims of the ‘288 patent and the ‘586 patent. Defendants suggested that Kimberly-Clark take a license to these patents and technology on certain terms.

16. On Friday, May 2, 2008, Defendants’ counsel emailed Kimberly-Clark a redacted copy of a *Markman* ruling and summary judgment decision from the Western District of North Carolina that entered partial summary judgment that another competitor’s products infringed the ‘288 patent and the ‘586 patent (*see DEB IP Ltd. and DEB SBS, Inc. v. GOJO Industries, Inc., et al.*, Civil Action No. 03:CV216, Order signed by Chief U.S.D.J. Voorhees). Defendants’ counsel attached a color photograph of the competitor’s accused products, which Defendants stated that they believed to be the same basic product that Kimberly-Clark was using in its foam soap products. Defendants’ counsel requested that Kimberly-Clark respond to the email and earlier license demand the following week. A copy of the email and both enclosures is attached as Exhibit C.

17. Upon information and belief, DEB IP and DEB SBS settled the above-referenced patent litigation, 03:CV216, on terms that included the named defendants taking a license to the '288 patent and/or the '586 patent. Upon information and belief, in June 2007, DEB IP and DEB SBS filed a separate patent infringement action under the '288 patent and the '586 patent against another competitor of Kimberly-Clark, alleging infringement by a "Foam Soap Dispenser and Refill" product (*see DEB IP Ltd. and DEB SBS, Inc. v. Technical Concepts, LLC, et al.*, Civil Action No. 07:CV232, (W.D.N.C.)). Upon information and belief, that litigation, 07:CV232, was settled on terms that included a license to the '288 patent and/or the '586 patent. The case was later dismissed on or about October 23, 2007, four months after the litigation was filed.

18. Kimberly-Clark faces continued uncertainty and insecurity due to Defendants' threatened claims of patent infringement, causing Plaintiffs harm and injury. Defendants' recent allegations of patent infringement and demands regarding license terms based on sales of Kimberly-Clark's foam soap products, in conjunction with Defendants' established course of conduct in litigating and licensing these same patents with Kimberly-Clark's direct competitors in other federal district courts, create a substantial case and controversy of sufficient immediacy and reality between Kimberly-Clark and Defendants to warrant the grant of declaratory relief.

19. Defendants' threats of infringement will continue unless enjoined by this Court.

#### **COUNT ONE**

#### **(Declaratory Relief for Non-Infringement of U.S. Patent No. 5,445,288)**

20. The allegations set forth in Paragraphs 1 through 19 are incorporated herein by reference.

21. A case or controversy exists between Kimberly-Clark and Defendants concerning Defendants' allegations that Kimberly-Clark is infringing the '288 Patent, which requires a declaration of rights by this Court.

22. The manufacture, use, offer for sale, and sale of Kimberly-Clark's foam soap products in the United States does not infringe, contributorily infringe, nor constitute inducement of infringement of any valid claim of the '288 patent.

23. Kimberly-Clark is entitled to a declaratory judgment that it has not infringed and is not now infringing, has not contributorily infringed and is not contributorily infringing, and has not induced and is not inducing infringement of any valid claim of the '288 patent.

**COUNT TWO**

**(Declaratory Relief for Non-infringement of U.S. Patent No. 6,082,586)**

24. The allegations set forth in Paragraphs 1 through 23 are incorporated herein by reference.

25. A case or controversy exists between Kimberly-Clark and Defendants concerning Defendants' allegations that Kimberly-Clark is infringing the '586 Patent, which requires a declaration of rights by this Court.

26. The manufacture, use, offer for sale, and sale of Kimberly-Clark's foam soap products in the United States does not infringe, contributorily infringe, nor constitute inducement of infringement of any valid claim of the '586 patent.

27. Kimberly-Clark is entitled to a declaratory judgment that it has not infringed and is not now infringing, has not contributorily infringed and is not contributorily infringing, and has not induced and is not inducing infringement of any valid claim of the '586 patent.

**COUNT THREE**

**(Declaratory Relief for Patent Invalidity of U.S. Patent No. 5,445,288)**

28. The allegations set forth in Paragraphs 1 through 27 are incorporated herein by reference.

29. There is an actual, substantial, and justiciable controversy between Kimberly-Clark and Defendants concerning the invalidity of the '288 patent, which requires a declaration of rights by this Court.

30. The '288 patent is invalid because the purported inventions therein fail to meet the conditions of patentability set forth in 35 U.S.C. §§102, 103, and/or §112.

31. Kimberly-Clark is entitled to a judgment that the '288 patent is invalid.

**COUNT FOUR**  
**(Declaratory Relief for Invalidity of U.S. Patent No. 6,082,586)**

32. The allegations set forth in Paragraphs 1 through 31 are incorporated herein by reference.

33. There is an actual, substantial, and justiciable controversy between Kimberly-Clark and Defendants concerning the invalidity of the '586 patent, which requires a declaration of rights by this Court.

34. The '586 patent is invalid because the purported inventions therein fail to meet the conditions of patentability set forth in 35 U.S.C. §§102, 103, and/or §112.

35. Kimberly-Clark is entitled to a judgment that the '586 patent is invalid.

**JURY DEMAND**

36. A trial by jury is hereby demanded.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter declaratory judgment, relief, and Order against Defendants as follows:

(A) A declaration that Kimberly-Clark has not, and is not currently, directly infringing, contributorily infringing, or inducing infringement of any valid claim of U.S. Patent No. 5,445,288;

(B) A declaration that Kimberly-Clark has not, and is not currently, directly infringing, contributorily infringing, or inducing infringement of any valid claim of U.S. Patent No. 6,082,586;

(C) Declaring the claims of U.S. Patent No. 5,445,288 invalid;

(D) Declaring the claims of U.S. Patent No. 6,082,586 invalid;

(F) Preliminarily and permanently enjoining Defendants, their officers, agents, servants, employees, representatives, successors, assigns, and any and all persons in active concert or participation with or under authority from Defendants, either separately or jointly, from asserting or enforcing U.S. Patent No. 5,445,288, or threatening the same, against Kimberly-Clark, its parent, related companies, successor or assigns, and/or manufacturers, distributors, purchasers or users of Kimberly-Clark's foam soap products;

(G) Preliminarily and permanently enjoining Defendants, their officers, agents, servants, employees, representatives, successors, assigns, and any and all persons in active concert or participation with or under authority from Defendants, either separately or jointly, from asserting or enforcing U.S. Patent No. 6,082,586, or threatening the same, against Kimberly-Clark, its parent, related companies, successor or assigns, and/or manufacturers, distributors, purchasers or users of Kimberly-Clark's foam soap products;

(H) Preliminarily and permanently enjoining Defendants, their officers, agents, servants, employees, representatives, successors, assigns, and any and all persons in active concert or participation with or under authority from Defendants, either separately or jointly, from interfering with, or threatening to interfere with, the manufacture, use, sale or offer of sale of Kimberly-Clark's foam soap products by Kimberly-Clark, its parent, related companies, successor or assigns, and/or manufacturers, distributors, purchasers or users of Kimberly-Clark's foam soap products in connection with its business;



- (I) Declaring this suit exceptional under 35 U.S.C. § 285 and that Plaintiffs be awarded their costs, expenses and reasonable attorney's fees; and
- (J) Awarding such other and further relief as this Court may deem just and proper.

Respectfully submitted this 13th day of May, 2008.

s/ Daniel T. Flaherty  
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