

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

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

AUG 30 2006

DAVID J. MALAND, CLERK

BY  
DEPUTY

CUSHION TECHNOLOGIES, LLC,  
A Texas Limited Liability Company

Plaintiff,

v.

ADIDAS SALOMON NORTH AMERICA,  
INC.,  
ADIDAS AMERICA, INC. (d/b/a ADIDAS  
INTERNATIONAL),  
ADIDAS PROMOTIONAL RETAIL  
OPERATIONS, INC.,  
NEW BALANCE ATHLETIC SHOE, INC.,  
REEBOK INTERNATIONAL, LTD.,  
THE ROCKPORT COMPANY, LLC,  
JONES APPAREL GROUP, INC.  
THE TIMBERLAND COMPANY,  
ALLEN EDMONDS SHOE CORPORATION,  
ECCO USA, INC.,  
SKECHERS USA, INC.,  
K-SWISS, INC.,  
CLARKS COMPANIES NORTH AMERICA,  
WOLVERINE WORD WIDE, INC.,  
L.A. GEAR, INC.,  
COLUMBIA SPORTSWEAR COMPANY,  
KEEN, LLC,  
DECKERS OUTDOOR CORPORATION,  
ASICS AMERICA CORPORATION,  
FILA USA, INC.,  
MIZUNO USA, INC.,  
SAUCONY, INC.,  
BIG 5 SPORTING GOOD CORPORATION,  
FOOT LOCKER, INC.,  
DICK'S SPORTING GOODS, INC.,  
MODELL'S SPORTING GOODS, INC.,  
THE SPORTS AUTHORITY, INC.,  
ATHLETE'S FOOT BRANDS, INC.,  
TJX COMPANIES, INC.,  
DSW, INC.,  
BROWN SHOE COMPANY, INC.,  
PAYLESS SHOESOURCE, INC.,  
THE FINISH LINE, INC.,

Civil Action No. 2-06CV-347

JURY TRIAL DEMANDED

TJW

**SHOE CARNIVAL INC., and  
ZAPPOS.COM, INC.,**

**Defendants.**

**PLAINTIFF CUSHION TECHNOLOGIES, LLC's ORIGINAL  
COMPLAINT FOR PATENT INFRINGEMENT**

This is an action for patent infringement in which Cushion Technologies, LLC ("Cushion Technologies") makes the following allegations against Adidas Salomon North America, Inc, Adidas America, Inc (d/b/a Adidas International), Adidas Promotional Retail Operations, Inc., New Balance Athletic Shoe, Inc., Reebok International, Ltd , The Rockport Company, LLC, Jones Apparel Group, Inc , The Timberland Company, Allen Edmonds Shoe Corporation, ECCO USA, Inc., Skechers USA, Inc., K-Swiss, Inc., Clarks Companies North America, Wolverine World Wide, Inc., L A. Gear, Inc., Columbia Sportswear Company, Keen, LLC, Deckers Outdoor Corporation, Asics America Corporation, Fila USA, Inc , Mizuno USA, Inc., Saucony, Inc , Big 5 Sporting Good Corporation, Foot Locker, Inc., Dick's Sporting Goods, Inc., Modell's Sporting Goods, Inc , The Sports Authority, Inc., Athlete's Foot Brands, Inc., TJX Companies, Inc., DSW, Inc., Brown Shoe Company, Inc , Payless Shoesource, Inc., The Finish Line, Inc., Shoe Carnival Inc , and Zappos Com, Inc

**PARTIES**

1. Plaintiff Cushion Technologies is a Texas limited liability company with its principal place of business at 207 C North Washington Avenue, Marshall, Texas 75670.

2. On information and belief, defendant Adidas Salomon North America, Inc. ("Adidas Salomon") is a Delaware corporation with its corporate headquarters and principal place of business at 5055 North Greeley Avenue, Portland, Oregon 97217-3254

3 On information and belief, defendant Adidas America, Inc. (d/b/a Adidas International) ("Adidas America") is a Delaware corporation with its corporate headquarters and principal place of business at 5055 North Greeley Avenue, Portland, Oregon 97217-3254.

4 On information and belief, defendant Adidas Promotional Retail Operations, Inc. ("Adidas Promotional") is an Oregon corporation with its corporate headquarters and principal place of business at 5055 North Greeley Avenue, Portland, Oregon 97217-3254.

5 On information and belief, defendant New Balance Athletic Shoe, Inc. ("New Balance") is a Massachusetts corporation with its corporate headquarters and principal place of business at Brighton Landing, 20 Guest Street, Boston, Massachusetts 02135-2088

6 On information and belief, defendant Reebok International, Ltd. ("Reebok") is a Massachusetts corporation with its corporate headquarters and principal place of business at 1895 J.W. Foster Boulevard, Canton, Massachusetts 02021.

7 On information and belief, defendant The Rockport Company, LLC ("Rockport") is a Delaware corporation with its corporate headquarters and principal place of business at 60 North Ronks Road, Ronks, Pennsylvania 17572.

8 On information and belief, defendant Jones Apparel Group, Inc. ("Jones Apparel") is a Pennsylvania corporation with its corporate headquarters and principal place of business at 250 Rittenhouse Circle, Bristol, Pennsylvania 19007.

9 On information and belief, defendant The Timberland Company ("Timberland") is a Delaware corporation with its corporate headquarters and principal place of business at 200 Domain Drive, Stratham, New Hampshire 03885.

10 On information and belief, defendant Allen Edmonds Shoe Corporation (“Allen Edmonds”) is a Wisconsin corporation with its corporate headquarters and principal place of business at P O Box 998, 201 East Seven Hills Road, Port Washington, Wisconsin 53074-0998.

11 On information and belief, defendant ECCO USA, Inc. is a New Hampshire corporation with its corporate headquarters and principal place of business at 16 Delta Drive, Londonderry, New Hampshire 03053

12. On information and belief, defendant Skechers USA, Inc. (“Skechers”) is a Delaware corporation with its corporate headquarters and principal place of business at 228 Manhattan Beach Boulevard, Manhattan Beach, California 90266.

13. On information and belief, defendant K-Swiss, Inc. (“K-Swiss”) is a Delaware corporation with its corporate headquarters and principal place of business at 31248 Oak Crest Drive, Westlake Village, California 91361.

14. On information and belief, defendant Clarks Companies North America (“Clarks Companies”) is a Delaware corporation with its corporate headquarters and principal place of business at 156 Oak Street, Newton Upper Falls, Massachusetts 02646

15. On information and belief, defendant Wolverine World Wide, Inc. (“Wolverine”) is a Delaware corporation with its corporate headquarters and principal place of business at 9341 Courtland Drive, Rockford, Michigan 49351.

16. On information and belief, defendant L.A. Gear, Inc. (“L.A. Gear”) is a California corporation with its corporate headquarters and principal place of business at 844 Moraga Drive, Los Angeles, California 90049.

17. On information and belief, defendant Columbia Sportswear Company (“Columbia”) is an Oregon corporation with its corporate headquarters and principal place of business at 14375 NW Science Park Drive, Portland, Oregon 97229.

18. On information and belief, defendant Keen, LLC (“Keen”) is a California limited liability corporation with its corporate headquarters and principal place of business at 926 NW 13<sup>th</sup> Avenue, Suite 210, Portland, Oregon 97209.

19. On information and belief, defendant Deckers Outdoor Corporation (“Deckers”) is a Delaware corporation with its corporate headquarters and principal place of business at 495-A South Fairview Avenue, Goleta, California 93117.

20. On information and belief, defendant Asics America Corporation (“Asics”) is a California corporation with its corporate headquarters and principal place of business at 16275 Laguna Canyon Road, Irvine, California 92618.

21. On information and belief, defendant Fila USA, Inc. (“Fila”) is a Delaware corporation with its corporate headquarters and principal place of business at 1 Fila Way, Sparks, Maryland 21152.

22. On information and belief, defendant Mizuno USA, Inc. (“Mizuno”) is a Georgia corporation with its corporate headquarters and principal place of business at 4925 Avalon Ridge Parkway, Norcross, Georgia 30071.

23. On information and belief, defendant Saucony, Inc. (“Saucony”) is a Massachusetts corporation with its corporate headquarters and principal place of business at 13 Centennial Drive, Peabody, Massachusetts 01961.

24. On information and belief, defendant Big 5 Sporting Good Corporation (“Big 5”) is a Delaware corporation with its corporate headquarters and principal place of business at 2525 East El Segundo Boulevard, El Segundo, California 90245

25. On information and belief, defendant Foot Locker, Inc. (“Foot Locker”) is a New York corporation with its corporate headquarters and principal place of business at 112 West 34<sup>th</sup> Street, New York, New York 10120.

26. On information and belief, defendant Dick’s Sporting Goods, Inc. (“Dick’s”) is a Delaware corporation with its corporate headquarters and principal place of business at 300 Industry Drive, RIDC Park West, Pittsburgh, Pennsylvania 15275.

27. On information and belief, defendant Modell’s Sporting Goods, Inc. (“Modell’s”) is a Delaware corporation with its corporate headquarters and principal place of business at 498 Seventh Avenue, 20<sup>th</sup> Floor, New York, New York 10018

28. On information and belief, defendant The Sports Authority, Inc. (“The Sports Authority”) is a Delaware corporation with its corporate headquarters and principal place of business at 1050 West Hampden Avenue, Englewood, Colorado 80110.

29. On information and belief, defendant Athlete’s Foot Brands, Inc. (“Athlete’s Foot”) is a Georgia corporation with its corporate headquarters and principal place of business at 1412 Oakbrook Drive, Suite 100, Norcross, Georgia 30093.

30. On information and belief, defendant TJX Companies, Inc. (“TJX”) is a Delaware corporation with its corporate headquarters and principal place of business at 770 Cochituate Road, Framingham, Massachusetts 01701.

31. On information and belief, defendant DSW, Inc. (“DSW”) is an Ohio corporation with its corporate headquarters and principal place of business at 4150 East 5<sup>th</sup> Avenue, Columbus, Ohio 43219.

32. On information and belief, defendant Brown Shoe Company, Inc. (“Brown”) is a New York corporation with its corporate headquarters and principal place of business at 8300 Maryland Avenue, P.O. Box 29, St. Louis, Missouri 63105.

33. On information and belief, defendant Payless Shoesource, Inc. (“Payless”) is a Delaware corporation with its corporate headquarters and principal place of business at 3231 Southeast Sixth Avenue, Topeka, Kansas 66607-2207.

34. On information and belief, defendant The Finish Line, Inc. (“Finish Line”) is an Indiana corporation with its corporate headquarters and principal place of business at 3308 North Mitthoeffer Road, Indianapolis, Indiana 46235.

35. On information and belief, defendant Shoe Carnival Inc. (“Shoe Carnival”) is an Indiana corporation with its corporate headquarters and principal place of business at 8233 Baumgart Road, Evansville, Indiana 47725.

36. On information and belief, defendant Zappos.Com, Inc. (“Zappos”) is a California corporation with its corporate headquarters and principal place of business at 2280 Corporate Circle, Suite 100, Henderson, Nevada 89074.

#### **JURISDICTION AND VENUE**

37. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

38. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). Each Defendant has a regular and established place of business in this district, has transacted business in this district and, on information and belief, and/or has committed acts of patent infringement in this district.

**COUNT 1**

**INFRINGEMENT OF U.S. PATENT 5,060,401**

39. Cushion Technologies is the owner by assignment of United States Patent No. 5,060,401 ("the '401 Patent") entitled "Footwear Cushioning Spring." A true and correct copy of the '401 Patent is attached as Exhibit A. The '401 Patent was duly issued on October 29, 1991.

40. The '401 Patent was the subject of a previous Markman ruling issued by the United States District Court for the District of Oregon. A copy of that order is attached as Exhibit B.

41. The '401 Patent was the subject of a reexamination proceeding (reexamination request no 90/005,556) (hereinafter the "'401 Patent Reexamination") before the United States Patent and Trademark Office ("PTO"). A copy of the unanimous decision by the Board of Patent Appeals and Interferences in the '401 Patent Reexamination is attached as Exhibit C. The PTO ultimately issued Ex Parte Reexamination Certificate US 5,060,401 C1 for the '401 Patent. See Exhibit A.

42. As a result of the '401 Patent Reexamination, the PTO confirmed the patentability of independent claims 1 and 16 of the '401 Patent.

43. Defendant Adidas Salomon has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401



Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

44 Defendant Adidas America has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

45 Defendant Adidas Promotional has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

46 Defendant New Balance has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

47 Defendant Reebok has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

48. Defendant Rockport has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

49. Defendant Jones Apparel has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

50. Defendant Timberland has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing

others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies

51 Defendant Allen Edmonds has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

52 Defendant ECCO has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

53 Defendant Skechers has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

54 Defendant K-Swiss has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among

other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

55. Defendant Clarks Companies has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

56 Defendant Wolverine has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

57 Defendant L A Gear has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

58. Defendant Columbia has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401

Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

59. Defendant Keen has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

60 Defendant Deckers has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

61. Defendant Asics has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

62. Defendant Fila has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies

63. Defendant Mizuno has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

64. Defendant Saucony has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

65. Defendant Big 5 has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to

perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies

66. Defendant Foot Locker has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

67. Defendant Dick's has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

68. Defendant Modell's has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies

69. Defendant The Sports Authority has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States

by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

70. Defendant Athlete's Foot has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

71. Defendant IJX has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

72. Defendant DSW has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

73. Defendant Brown has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401



Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

74. Defendant Payless has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

75. Defendant The Finish Line has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

76. Defendant Shoe Carnival has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

77. Defendant Zappos has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '401 Patent to the injury of Cushion Technologies.

78. These defendants have actively induced and are actively inducing infringement of the '401 Patent.

79. On information and belief, Defendants Adidas Salomon, Adidas America, Adidas Promotional, New Balance, Reebok, Rockport, Jones Apparel, Timberland, Allen Edmonds, ECCO, Skechers, K-Swiss, Clarks Companies, Wolverine, L A Gear, Columbia, Keen, Deckers, Asics, Fila, Mizuno, Saucony, Big 5, Foot Locker, Dick's, Modell's, The Sports Authority, Athlete's Foot, TJX, DSW, Brown, Payless, The Finish Line, Shoe Carnival and Zappos have willfully infringed the '401 Patent and continue to willfully infringe the '401 Patent.

80. On information and belief, to the extent any marking was required by 35 U.S.C. § 287, all predecessors in interest to the '401 Patent complied with such requirements and all licensees of the '401 Patent are obligated to mark licensed products in compliance with such requirements.

81. As a result of these Defendants' infringement of the '401 Patent, Cushion Technologies has suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

82. Unless a permanent injunction is issued enjoining these Defendants and their agents, servants, employees, attorneys, representatives, affiliates and all others acting on their behalf from infringing the '401 Patent, Cushion Technologies will be greatly and irreparably harmed.

## **COUNT 2**

### **INFRINGEMENT OF U.S. PATENT 5,279,051**

83. Cushion Technologies is the owner by assignment of United States Patent No. 5,279,051 ("the '051 Patent") entitled "Footwear Cushioning Spring." A true and correct copy of the '051 Patent is attached as Exhibit D. The '051 Patent was duly issued on January 18, 1994.

84. The '051 Patent was the subject of a previous Markman ruling issued by the United States District Court for the District of Oregon. A copy of that order is attached as Exhibit B.

85. The '051 Patent was the subject of a reexamination proceeding (reexamination request no.90/005,557) (hereinafter the "'051 Patent Reexamination") before the United States Patent and Trademark Office ("PTO"). A copy of the unanimous decision by the Board of Patent Appeals and Interferences in the '401 Patent Reexamination is attached as Exhibit E. The PTO ultimately issued Ex Parte Reexamination Certificate US 5,279,051 C1 for the '501 patent. See Exhibit D.

86. As a result of the '051 Patent Reexamination, the PTO confirmed the patentability of independent claims 1, 4, 46 and 47 of the '051 Patent.

87. Defendant Adidas Salomon has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401

Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform the methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

88. Defendant Adidas America has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies

89 Defendant Adidas Promotional has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

90. Defendant New Balance has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

91 Defendant Reebok has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

92. Defendant Rockport has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies

93 Defendant Jones Apparel has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

94. Defendant Timberland has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing

others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

95. Defendant Allen Edmonds has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

96. Defendant ECCO has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

97. Defendant Skechers has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

98. Defendant K-Swiss has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among

other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

99. Defendant Clarks Companies has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

100. Defendant Wolverine has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

101. Defendant L.A. Gear has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

102. Defendant Columbia has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401

Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

103. Defendant Keen has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

104. Defendant Deckers has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

105. Defendant Asics has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.



106. Defendant Fila has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

107. Defendant Mizuno has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

108. Defendant Saucony has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

109. Defendant Big 5 has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to

perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

110. Defendant Foot Locker has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

111. Defendant Dick's has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

112. Defendant Modell's has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

113. Defendant The Sports Authority has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States

by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

114. Defendant Athlete's Foot has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies

115. Defendant TJX has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

116. Defendant DSW has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

117. Defendant Brown has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401

Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

118. Defendant Payless has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies

119. Defendant The Finish Line has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

120. Defendant Shoe Carnival has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

121. Defendant Zappos has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '401 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering to sell shoes and practicing and/or inducing others to perform methods covered by one or more claims of the '051 Patent to the injury of Cushion Technologies.

122. Defendants have actively induced and are actively inducing infringement of the '051 Patent.

123. On information and belief, Defendants Adidas Salomon, Adidas America, Adidas Promotional, New Balance, Reebok, Rockport, Jones Apparel, Timberland, Allen Edmonds, ECCO, Skechers, K-Swiss, Clarks Companies, Wolverine, L.A. Gear, Columbia, Keen, Deckers, Asics, Fila, Mizuno, Saucony, Big 5, Foot Locker, Dick's, Modell's, The Sports Authority, Athlete's Foot, TJX, DSW, Brown, Payless, The Finish Line, Shoe Carnival and Zappos have willfully infringed the '401 Patent and continue to willfully infringe the '051 Patent.

124. On information and belief, to the extent any marking was required by 35 U.S.C. § 287, all predecessors in interest to the '051 Patent complied with such requirements and all licensees of the '051 Patent are obligated to mark licensed products in compliance with such requirements.

125. As a result of Defendants' infringement of the '051 Patent, Cushion Technologies has suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

126. Unless a permanent injunction is issued enjoining Defendants and their agents, servants, employees, attorneys, representatives, affiliates and all others acting on their behalf from infringing the '051 Patent, Cushion Technologies will be greatly and irreparably harmed.

**JURY DEMAND**

127. Cushion Technologies demands a trial by jury on all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Cushion Technologies requests that this Court enter:

1. A judgment in favor of Cushion Technologies that Defendants Adidas Salomon North America, Inc, Adidas America, Inc (d/b/a Adidas International), Adidas Promotional Retail Operations, Inc., New Balance Athletic Shoe, Inc., Reebok International, Ltd , The Rockport Company, LLC, Jones Apparel Group, Inc , The Timberland Company, Allen Edmonds Shoe Corporation, ECCO USA, Inc , Skechers USA, Inc., K-Swiss, Inc , Clarks Companies North America, Wolverine World Wide, Inc , L.A. Gear, Inc., Columbia Sportswear Company, Keen, LLC, Deckers Outdoor Corporation, Asics America Corporation, Fila USA, Inc., Mizuno USA, Inc , Saucony, Inc., Big 5 Sporting Good Corporation, Foot Locker, Inc., Dick's Sporting Goods, Inc., Modell's Sporting Goods, Inc., The Sports Authority, Inc., Athlete's Foot Brands, Inc., TJX Companies, Inc., DSW, Inc., Brown Shoe Company, Inc., Payless Shoesource, Inc., The Finish Line, Inc., Shoe Carnival Inc., and Zappos Com, Inc. have infringed, directly and indirectly by way of inducing and/or contributing to the infringement of the '401 Patent

2. A judgment in favor of Cushion Technologies that each of the Defendants' Adidas Salomon North America, Inc, Adidas America, Inc (d/b/a Adidas International), Adidas Promotional Retail Operations, Inc., New Balance Athletic Shoe, Inc., Reebok International,

Ltd., The Rockport Company, LLC, Jones Apparel Group, Inc., The Timberland Company, Allen Edmonds Shoe Corporation, ECCO USA, Inc., Skechers USA, Inc., K-Swiss, Inc., Clarks Companies North America, Wolverine World Wide, Inc., L.A. Gear, Inc., Columbia Sportswear Company, Keen, LLC, Deckers Outdoor Corporation, Asics America Corporation, Fila USA, Inc., Mizuno USA, Inc., Saucony, Inc., Big 5 Sporting Goods Corporation, Foot Locker, Inc., Dick's Sporting Goods, Inc., Modell's Sporting Goods, Inc., The Sports Authority, Inc., Athlete's Foot Brands, Inc., TJX Companies, Inc., DSW, Inc., Brown Shoe Company, Inc., Payless Shoesource, Inc., The Finish Line, Inc., Shoe Carnival Inc., and Zappos Com, Inc. infringement of the '401 Patent was willful.

3. A permanent injunction enjoining Defendants Adidas Salomon North America, Inc, Adidas America, Inc (d/b/a Adidas International), Adidas Promotional Retail Operations, Inc., New Balance Athletic Shoe, Inc., Reebok International, Ltd., The Rockport Company, LLC, Jones Apparel Group, Inc., The Timberland Company, Allen Edmonds Shoe Corporation, ECCO USA, Inc. Skechers USA, Inc., K-Swiss, Inc., Clarks Companies North America, Wolverine World Wide, Inc., L.A. Gear, Inc., Columbia Sportswear Company, Keen, LLC, Deckers Outdoor Corporation, Asics America Corporation, Fila USA, Inc., Mizuno USA, Inc., Saucony, Inc., Big 5 Sporting Goods Corporation, Foot Locker, Inc., Dick's Sporting Goods, Inc., Modell's Sporting Goods, Inc., The Sports Authority, Inc., Athlete's Foot Brands, Inc., TJX Companies, Inc., DSW, Inc., Brown Shoe Company, Inc., Payless Shoesource, Inc., The Finish Line, Inc., Shoe Carnival Inc., and Zappos Com, Inc., and their officers, directors, agents, servants affiliates, employees, divisions, branches subsidiaries, parents and all others acting in concert or privity with any of them from infringement, inducing the infringement of, or contributing to the infringement of the '401 Patent.

4. A judgment and order requiring Defendants Adidas Salomon North America, Inc, Adidas America, Inc (d/b/a Adidas International), Adidas Promotional Retail Operations, Inc., New Balance Athletic Shoe, Inc., Reebok International, Ltd , The Rockport Company, LLC, Jones Apparel Group, Inc , The Timberland Company, Allen Edmonds Shoe Corporation, ECCO USA, Inc. Skechers USA, Inc., K-Swiss, Inc., Clarks Companies North America, Wolverine World Wide, Inc., L A. Gear, Inc., Columbia Sportswear Company, Keen, LLC, Deckers Outdoor Corporation, Asics America Corporation, Fila USA, Inc., Mizuno USA, Inc., Saucony, Inc , Big 5 Sporting Good Corporation, Foot Locker, Inc., Dick's Sporting Goods, Inc., Modell's Sporting Goods, Inc., The Sports Authority, Inc., Athlete's Foot Brands, Inc., TJX Companies, Inc., DSW, Inc., Brown Shoe Company, Inc., Payless Shoesource, Inc , The Finish Line, Inc., Shoe Carnival Inc., and Zappos Com, Inc. to pay Cushion Technologies damages for Defendants' infringement of the '401 Patent, together with interest (both pre- and post-judgment), costs and disbursements as fixed by this Court under 35 U.S.C. §284;

5. A judgment in favor of Cushion Technologies that Defendants Adidas Salomon North America, Inc, Adidas America, Inc (d/b/a Adidas International), Adidas Promotional Retail Operations, Inc., New Balance Athletic Shoe, Inc., Reebok International, Ltd., The Rockport Company, LLC, Jones Apparel Group, Inc., The Timberland Company, Allen Edmonds Shoe Corporation, ECCO USA, Inc., Skechers USA, Inc., K-Swiss, Inc., Clarks Companies North America, Wolverine World Wide, Inc., L A. Gear, Inc., Columbia Sportswear Company, Keen, LLC , Deckers Outdoor Corporation, Asics America Corporation, Fila USA, Inc., Mizuno USA, Inc., Saucony, Inc., Big 5 Sporting Good Corporation, Foot Locker, Inc., Dick's Sporting Goods, Inc., Modell's Sporting Goods, Inc., The Sports Authority, Inc., Athlete's Foot Brands, Inc., TJX Companies, Inc., DSW, Inc., Brown Shoe Company, Inc.,



Payless Shoesource, Inc., The Finish Line, Inc., Shoe Carnival Inc., and Zappos.Com, Inc. have infringed, directly and indirectly by way of inducing and/or contributing to the infringement of the '051 Patent.

6. A judgment in favor of Cushion Technologies that each of the Defendants' Adidas Salomon North America, Inc, Adidas America, Inc (d/b/a Adidas International), Adidas Promotional Retail Operations, Inc., New Balance Athletic Shoe, Inc., Reebok International, Ltd., The Rockport Company, LLC, Jones Apparel Group, Inc., The Timberland Company, Allen Edmonds Shoe Corporation, ECCO USA, Inc., Skechers USA, Inc., K-Swiss, Inc., Clarks Companies North America, Wolverine World Wide, Inc., L.A. Gear, Inc., Columbia Sportswear Company, Keen, LLC, Deckers Outdoor Corporation, Asics America Corporation, Fila USA, Inc., Mizuno USA, Inc., Saucony, Inc., Big 5 Sporting Goods Corporation, Foot Locker, Inc., Dick's Sporting Goods, Inc., Modell's Sporting Goods, Inc., The Sports Authority, Inc., Athlete's Foot Brands, Inc., TJX Companies, Inc., DSW, Inc., Brown Shoe Company, Inc., Payless Shoesource, Inc., The Finish Line, Inc., Shoe Carnival Inc., and Zappos.Com, Inc. infringement of the '051 Patent was willful.

7. A permanent injunction enjoining Defendants Adidas Salomon North America, Inc, Adidas America, Inc (d/b/a Adidas International), Adidas Promotional Retail Operations, Inc., New Balance Athletic Shoe, Inc., Reebok International, Ltd., The Rockport Company, LLC, Jones Apparel Group, Inc., The Timberland Company, Allen Edmonds Shoe Corporation, ECCO USA, Inc. Skechers USA, Inc., K-Swiss, Inc., Clarks Companies North America, Wolverine World Wide, Inc., L.A. Gear, Inc., Columbia Sportswear Company, Keen, LLC, Deckers Outdoor Corporation, Asics America Corporation, Fila USA, Inc., Mizuno USA, Inc., Saucony, Inc., Big 5 Sporting Goods Corporation, Foot Locker, Inc., Dick's Sporting Goods, Inc., Modell's

Sporting Goods, Inc., The Sports Authority, Inc., Athlete's Foot Brands, Inc., TJX Companies, Inc., DSW, Inc., Brown Shoe Company, Inc., Payless Shoesource, Inc., The Finish Line, Inc., Shoe Carnival Inc., and Zappos.Com, Inc., and their officers, directors, agents, servants affiliates, employees, divisions, branches subsidiaries, parents and all others acting in concert or privity with any of them from infringement, inducing the infringement of, or contributing to the infringement of the '051 Patent.

8. A judgment and order requiring Defendants Adidas Salomon North America, Inc, Adidas America, Inc (d/b/a Adidas International), Adidas Promotional Retail Operations, Inc., New Balance Athletic Shoe, Inc., Reebok International, Ltd., The Rockport Company, LLC, Jones Apparel Group, Inc., The Timberland Company, Allen Edmonds Shoe Corporation, ECCO USA, Inc., Skechers USA, Inc., K-Swiss, Inc., Clarks Companies North America, Wolverine World Wide, Inc., L A Gear, Inc., Columbia Sportswear Company, Keen, LLC, Deckers Outdoor Corporation, Asics America Corporation, Fila USA, Inc., Mizuno USA, Inc., Saucony, Inc., Big 5 Sporting Good Corporation, Foot Locker, Inc., Dick's Sporting Goods, Inc., Modell's Sporting Goods, Inc., The Sports Authority, Inc., Athlete's Foot Brands, Inc., TJX Companies, Inc., DSW, Inc., Brown Shoe Company, Inc., Payless Shoesource, Inc., The Finish Line, Inc., Shoe Carnival Inc., and Zappos.Com, Inc. to pay Cushion Technologies damages for Defendants' infringement of the '051 Patent, together with interest (both pre- and post-judgment), costs and disbursements as fixed by this Court under 35 U.S.C. §284

9. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. §285 and awarding to Cushion Technologies its reasonable attorneys' fees that Cushion Technologies proves it is entitled to at trial;

10. Cushion Technologies' costs; and

11. Any and all other relief to which Cushion Technologies may show itself to be entitled.

Respectfully submitted,

**CUSHION TECHNOLOGIES, LLC**

Dated: August 30, 2006

By: 

Danny L. Williams

LEAD ATTORNEY

State Bar No. 21518050

J. Mike Amerson

State Bar No. 01150025

**Williams, Morgan & Amerson, P.C.**

10333 Richmond, Suite 1100

Houston, Texas 77042

Telephone: (713) 934-4060

Facsimile: (713) 934-7011

E-mail: [danny@wma.law.com](mailto:danny@wma.law.com)

E-mail: [mike@wma.law.com](mailto:mike@wma.law.com)

David M. Pridham

**Intellectual Property Navigation  
Group, LLC**

R.I. State Bar No. 6625

207 C North Washington Avenue

Marshall, Texas 75670

Telephone: (903) 938-7400

Facsimile: (903) 938-7404

E-mail: [david@ipnav.com](mailto:david@ipnav.com)

**ATTORNEYS FOR PLAINTIFF  
CUSHION TECHNOLOGIES, LLC**