

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

Kimberly-Clark Corporation,	)	
Kimberly-Clark Worldwide, Inc., and	)	
Kimberly-Clark Global Sales, Inc.,	)	
Plaintiffs,	)	Case No.
v.	)	Jury Trial Demanded
Tyco Healthcare Retail Group, Inc.	)	
Defendant.	)	
	)	

**COMPLAINT**

Plaintiffs, Kimberly-Clark Corporation, Kimberly-Clark Worldwide, Inc. and Kimberly-Clark Global Sales, Inc. (collectively “K-C”), by its attorneys, for its complaint against Defendant Tyco Healthcare Retail Group, Inc. (“Tyco”), hereby demands a jury trial and alleges as follows:

**THE PARTIES**

1. Kimberly-Clark Corporation, Kimberly-Clark Worldwide, Inc. and Kimberly-Clark Global Sales, Inc. are all corporations organized and existing under the laws of the State of Delaware, and having principal places of business within this district in Neenah, Wisconsin. Kimberly-Clark Worldwide, Inc. and Kimberly-Clark Global Sales, Inc. are wholly owned subsidiaries of Kimberly-Clark Corporation. K-C has manufacturing, research, sales and marketing offices and facilities in Neenah, Wisconsin.

2. Upon information and belief, Defendant Tyco Healthcare Retail Group, Inc. is a Delaware corporation, having a principal place of business in King of Prussia, Pennsylvania.

### **JURISDICTION AND VENUE**

3. This action is for patent infringement 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 Tyco because Tyco is doing business in this district. Upon information and belief, Tyco offers for sale, sells, distributes and purposefully ships products according to the claims of the patents in suit in the Eastern District of Wisconsin through an established distribution channel.

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

### **COUNT I – INFRINGEMENT OF U.S. PATENT NO. 4,655,759**

7. On April 7, 1987, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 4,655,759 (“the ‘759 patent”) to Alice Y. Romans-Hess, Frederick M. Guenther, and Lenore S. Ryan (collectively, “Inventors”). The Inventors assigned to K-C the entire right, title, and interest to the ‘759 patent, including all rights to recover for all infringements thereof. A copy of the ‘759 patent is attached hereto as Exhibit A.

8. Upon information and belief, Tyco has been and continues to infringe, induce the infringement of, and contribute to the infringement of the ‘759 patent by manufacturing, using,

selling, offering to sell, and/or importing products that are covered by one or more claims of the '759 patent, including, but not limited to, sanitary napkins sold at Walgreens, Target, Wal-Mart, K-Mart, CVS, Safeway, Albertsons, and Kroger.

9. K-C has been damaged by Tyco's infringement.

10. Tyco's acts of infringement have been without express or implied license by K-C and are in violation of K-C's rights.

11. Upon information and belief, Tyco has continued its infringement in willful disregard of the '759 patent and the rights created thereunder. This is an exceptional case because of Tyco's willful infringement.

#### **COUNT II – INFRINGEMENT OF U.S. PATENT NO. 5,795,344**

12. On Aug. 18, 1998, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,795,344 ("the '344 patent") to Charles John Chappell. Mr. Chappell assigned to K-C the entire right, title, and interest to the '344 patent, including all rights to recover for all infringements thereof. A copy of the '344 patent is attached hereto as Exhibit B.

13. Upon information and belief, Tyco has been and continues to infringe, induce the infringement of, and contribute to the infringement of the '344 patent by manufacturing, using, selling, offering to sell, and/or importing products that are covered by one or more claims of the '344 patent, including, but not limited to, sanitary napkins sold at Walgreens, Target, Wal-Mart, K-Mart, CVS, Safeway, Albertsons, and Kroger.

14. K-C has been damaged by Tyco's infringement.

15. Tyco's 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.

16. Upon information and belief, Tyco has continued its infringement in willful disregard of the '344 patent and the rights created thereunder. This is an exceptional case because of Tyco's willful infringement.

**JURY DEMAND**

17. Trial by Jury is hereby demanded.

**RELIEF SOUGHT**

**WHEREFORE**, K-C prays:

A. For injunctive relief against further infringement of the '344 patent by Tyco, their officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with any one or more of them;

B. For damages to compensate K-C for the infringement of the '759 and '344 patents, together with prejudgment and postjudgment interest;

C. For an assessment of costs against Tyco;

D. For treble damages pursuant to 35 U.S.C. § 284 because Tyco's infringement has been willful;

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

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

Respectfully submitted this 13th day of September, 2005.

s/ Daniel T. Flaherty

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