

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION**

**SCA HYGIENE PRODUCTS AKTIEBOLAG and
SCA PERSONAL CARE, INC.,**

Plaintiffs,

v.

**FIRST QUALITY BABY PRODUCTS, LLC,
FIRST QUALITY HYGIENIC, INC.,
FIRST QUALITY PRODUCTS, INC., and
FIRST QUALITY RETAIL SERVICES, LLC,**

Defendants.

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) Civil Action No. 1:10-cv-122-M

Jury Trial Demanded

(Electronically Filed)

SECOND AMENDED COMPLAINT

Plaintiffs SCA Hygiene Products Aktiebolag, and SCA Personal Care, Inc., for their Complaint against Defendants First Quality Baby Products, LLC, First Quality Hygienic, Inc., First Quality Products, Inc., and First Quality Retail Services, LLC, hereby allege as follows:

NATURE OF THE ACTION

1. This is a civil action for infringement of United States Patent No. 6,375,646 and its accompanying Reexamination Certificate (“the ‘646 patent”), entitled “Absorbent Pants-Type Diaper.” This action arises under the patent laws of the United States, 35 U.S.C. § 271 *et. seq.*

PARTIES

2. Plaintiff SCA Hygiene Products Aktiebolag (“SCA Hygiene Products”) is a Swedish corporation with its principal place of business located at Bäckstensgatan 5, Mölndal, Sweden, and its registered address at SE 405 03 Göteborg, Sweden.

3. SCA Hygiene Products is the owner of all right, title, and interest in the '646 patent.

4. Plaintiff SCA Personal Care, Inc. ("SCA Personal Care") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 2929 Arch Street, Suite 2600, Philadelphia, Pennsylvania and with its only manufacturing facility in the United States of America located at 7030 Louisville Road, Bowling Green, Kentucky.

5. SCA Personal Care is the exclusive licensee of the '646 patent.

6. SCA Personal Care is a leading company in Bowling Green with roots in the community going back to 1988. Today it manufactures adult incontinence and other personal care products in its Bowling Green facility where it employs approximately 180 people as full time employees. In 2001, the Bowling Green Area Chamber of Commerce recognized SCA Personal Care with its Industry of the Year award for SCA Personal Care's commitment and contributions to the community.

7. SCA Personal Care has recently caused an additional manufacturing line to be built in Bowling Green to produce adult incontinence products covered by the '646 patent.

8. Defendant First Quality Baby Products, LLC, is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business located at 97 Locust Road, Lewistown, Pennsylvania.

9. Defendant First Quality Hygienic, Inc., is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business located at 101 Innovation Boulevard, State College, Pennsylvania.

10. Defendant First Quality Products, Inc., is a corporation organized and existing

under the laws of the State of New York with its principal place of business located at 121 McElhattan Road, McElhattan, Pennsylvania.

11. Defendant First Quality Retail Services, LLC, is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business located at 600 Allendale Road, King of Prussia, Pennsylvania and is a foreign corporation authorized to transact business in the Commonwealth of Kentucky pursuant to KRS 271B.15-010 *et. seq.*

JURISDICTION AND VENUE

12. This is an action for infringement of the '646 patent, arising under the patent laws of the United States, specifically 35 U.S.C. § 271, *et. seq.*

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

14. Venue is proper pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(b) because Defendants have harmed, and continue to harm, SCA Hygiene Products and SCA Personal Care by performing acts in the Western District of Kentucky that directly or indirectly infringe one or more claims of the '646 patent, including making, using, offering for sale, selling, distributing, and/or shipping products that are covered by one or more claims of the '646 patent.

15. This Court also has personal jurisdiction over Defendants. Defendants have engaged in substantial and/or continuous and systematic contacts with the Commonwealth of Kentucky, which satisfy due process and confer personal jurisdiction over Defendants.

FACTUAL BACKGROUND

16. On April 23, 2002, the '646 patent entitled "Absorbent Pants-Type Diaper" was duly and legally issued by the United States Patent and Trademark Office from United States Patent Application No. 08/295,874, claiming priority from a foreign application filed on March 4, 1992.

17. A Request for Reexamination of the '646 patent was made on July 7, 2004, and a Reexamination Certificate issued on March 27, 2007. In the Reexamination Certificate, the patentability of the original claims in the '646 patent was confirmed and new claims were added and determined to be patentable. A true and correct copy of the '646 patent, with the Reexamination Certificate, is attached hereto as Exhibit A.

18. The '646 patent was issued to Urban Widlund, Gunilla Hedlund, and Robert Kling, who assigned to SCA Hygiene Products (f/k/a SCA Molnlycke Aktiebolag; f/k/a Molnlycke Aktiebolag) the entire right, title, and interest to the '646 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

19. SCA Hygiene Products licensed to SCA Personal Care the exclusive right to practice the '646 patent.

20. Defendants manufacture and offer for sale in areas throughout the country, including the Western District of Kentucky, adult incontinence products under the PREVAIL label, certain store brand labels, and other private labels, including but not limited to the following products (in various sizes): Prevail Protective Underwear, Prevail Extra Underwear, Prevail Super Plus Underwear, Prevail Underwear for Women, Prevail Per-Fit Underwear, Prevail All Nites, Assurance Protective Underwear, Assurance Underwear for Men, Assurance

Underwear for Women, Assurance Premium Underwear, Assurance Extra Absorbency Underwear, Assurance Super Plus Absorbency Underwear, Affirm Underwear, Affirm Extra Absorbency Underwear, Affirm Super Plus Absorbency Underwear, Affirm Underwear for Men, Affirm Underwear for Women, CVS Protective Underwear, CVS Extra Absorbency Protective Underwear, CVS Men's Underwear, CVS Men's Underwear Extra Absorbency, CVS Men's Underwear Super Plus Absorbency, CVS Women's Underwear, CVS Women's Underwear Extra Absorbency, CVS Women's Underwear Super Plus Absorbency, Invacare Protective Underwear Overnight Super Plus Absorbency, Member's Mark Protective Underwear, Member's Mark Extra Absorbent Underwear, Rite Aid Protective Underwear, Rite Aid Protective Underwear Extra Absorbency, Rite Aid Women's Select Premium Underwear, ShopRite Protective Extra Absorbency Underwear, Walgreens Certainty Underwear, Walgreens Certainty Underwear Extra Absorbency, Walgreens Certainty Underwear Super Plus Absorbency, Walgreens Certainty Men's Underwear, Walgreens Certainty Women's Underwear, Walgreens Certainty Women's Extra Absorbency Underwear, and Walgreens Certainty Women's Super Plus Absorbency Underwear.

21. The adult incontinence products sold under the PREVAIL label, certain store brand labels, and other private labels, including but not limited to the following products (in various sizes): Prevail Protective Underwear, Prevail Extra Underwear, Prevail Super Plus Underwear, Prevail Underwear for Women, Prevail Per-Fit Underwear, Prevail All Nites, Assurance Protective Underwear, Assurance Underwear for Men, Assurance Underwear for Women, Assurance Premium Underwear, Assurance Extra Absorbency Underwear, Assurance Super Plus Absorbency Underwear, Affirm Underwear, Affirm Extra Absorbency Underwear, Affirm Super Plus Absorbency Underwear, Affirm Underwear for Men, Affirm Underwear for

Women, CVS Protective Underwear, CVS Extra Absorbency Protective Underwear, CVS Men's Underwear, CVS Men's Underwear Extra Absorbency, CVS Men's Underwear Super Plus Absorbency, CVS Women's Underwear, CVS Women's Underwear Extra Absorbency, CVS Women's Underwear Super Plus Absorbency, Invacare Protective Underwear Overnight Super Plus Absorbency, Member's Mark Protective Underwear, Member's Mark Extra Absorbent Underwear, Rite Aid Protective Underwear, Rite Aid Protective Underwear Extra Absorbency, Rite Aid Women's Select Premium Underwear, ShopRite Protective Extra Absorbency Underwear, Walgreens Certainty Underwear, Walgreens Certainty Underwear Extra Absorbency, Walgreens Certainty Underwear Super Plus Absorbency, Walgreens Certainty Men's Underwear, Walgreens Certainty Women's Underwear, Walgreens Certainty Women's Extra Absorbency Underwear, and Walgreens Certainty Women's Super Plus Absorbency Underwear, are covered by one or more claims in the '646 patent.

22. Defendants manufacture and offer for sale in areas throughout the country, including the Western District of Kentucky, children's training pants and disposable pants under the labels WONDERPANTS and SLEEPOVERS, including but not limited to WonderPants Training Pants (various sizes), and SleepOvers Youth Pants (various sizes).

23. The children's training pants and disposable pants under the WONDERPANTS and SLEEPOVERS labels, including but not limited to WonderPants Training Pants (various sizes), and SleepOvers Youth Pants (various sizes), are covered by one or more claims in the '646 patent.

24. On October 31, 2003, counsel for SCA notified Defendants by letter that their absorbent pants-type diapers infringe one or more claims of the '646 patent.

COUNT I: INFRINGEMENT OF THE '646 PATENT

24. SCA Hygiene Products and SCA Personal Care incorporate each of the preceding paragraphs as if fully set forth herein.

25. Defendants have been infringing the '646 patent, and contributing to and actively inducing the infringement of the '646 patent by others in the United States, by making, using, selling, offering for sale, and/or importing into the United States, including within the Western District of Kentucky, without license or authorization certain products under the labels of PREVAIL, WONDERPANTS, SLEEPOVERS, certain store brand labels, and other private labels that embody the inventions claimed in the '646 patent, including but not limited to the following products (in various sizes): Prevail Protective Underwear, Prevail Extra Underwear, Prevail Super Plus Underwear, Prevail Underwear for Women, Prevail Per-Fit Underwear, Prevail All Nites, WonderPants Training Pants, SleepOvers Youth Pants, Assurance Protective Underwear, Assurance Underwear for Men, Assurance Underwear for Women, Assurance Premium Underwear, Assurance Extra Absorbency Underwear, Assurance Super Plus Absorbency Underwear, Affirm Underwear, Affirm Extra Absorbency Underwear, Affirm Super Plus Absorbency Underwear, Affirm Underwear for Men, Affirm Underwear for Women, CVS Protective Underwear, CVS Extra Absorbency Protective Underwear, CVS Men's Underwear, CVS Men's Underwear Extra Absorbency, CVS Men's Underwear Super Plus Absorbency, CVS Women's Underwear, CVS Women's Underwear Extra Absorbency, CVS Women's Underwear Super Plus Absorbency, Invacare Protective Underwear Overnight Super Plus Absorbency, Member's Mark Protective Underwear, Member's Mark Extra Absorbent Underwear, Rite Aid Protective Underwear, Rite Aid Protective Underwear Extra Absorbency, Rite Aid Women's Select Premium Underwear, ShopRite Protective Extra Absorbency Underwear, Walgreens

Certainty Underwear, Walgreens Certainty Underwear Extra Absorbency, Walgreens Certainty Underwear Super Plus Absorbency, Walgreens Certainty Men's Underwear, Walgreens Certainty Women's Underwear, Walgreens Certainty Women's Extra Absorbency Underwear, and Walgreens Certainty Women's Super Plus Absorbency Underwear. Such acts constitute infringement under at least 35 U.S.C. §§ 271 (a), (b), and (c).

26. Defendants have continued to infringe the '646 patent despite being aware of that patent and Defendants' infringement of that patent.

27. Defendants have derived and received, and will continue to derive and receive, gains, profits, advantages, and market share from their infringement of the '646 patent in amounts not presently known to SCA Hygiene Products and SCA Personal Care, Inc.

28. SCA Hygiene Products and SCA Personal Care have been damaged by Defendants' infringing activities.

29. Defendants' acts of infringement as set out in the previous paragraphs have been deliberate and willful, and in reckless disregard of SCA Hygiene Products and SCA Personal Care's patent rights.

30. On information and belief, Defendants will continue to directly or indirectly infringe the '646 patent, and thus continue to harm SCA Hygiene Products and SCA Personal Care, unless enjoined by this Court. SCA Hygiene Products and SCA Personal Care have no adequate remedy at law.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, SCA Hygiene Products and SCA Personal Care hereby demand a jury trial on all issues raised in this Complaint so triable by jury.

RELIEF SOUGHT

WHEREFORE, SCA Hygiene Products and SCA Personal Care respectfully demand judgment for themselves and against Defendants as follows:

- a. That this Court adjudge that Defendants have infringed one or more of the claims of the '646 patent;
- b. That this Court issue an injunction against further direct or indirect infringement of the '646 patent by Defendants, their officers, agents, servants, employees, privies, and all persons in active concert or participation with them or controlled by them;
- c. That this Court ascertain and award SCA Hygiene Products AB and SCA Personal Care, Inc., actual and treble damages from the infringement of one or more claims of the '646 patent, together with prejudgment and postjudgment interest, pursuant to 35 U.S.C. § 284;
- d. That this Court find case this case to be exceptional and award reasonable attorney fees, costs, and expenses in this action to SCA Hygiene Products AB and SCA Personal Care, Inc., pursuant to 35 U.S.C. § 285; and
- e. That this Court award SCA Hygiene Products AB and SCA Personal Care, Inc., all such other relief as the Court may deem just and equitable.

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CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2011, I electronically filed the foregoing document with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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