

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

AKEVA, L.L.C.,)
a North Carolina Corporation,)
)
Plaintiff,)
)
v.)
)
NIKE, INC., an Oregon corporation;)
ADIDAS AMERICA, INC., a Delaware)
corporation; NEW BALANCE ATHLETIC)
SHOE, INC., a Massachusetts corporation;)
and PUMA NORTH AMERICA, INC., a)
Delaware corporation,)
)
Defendants.)

CIVIL ACTION NO. 1:09-CV-659

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Akeva, L.L.C. (“Akeva” or “Plaintiff”), for its Complaint against Defendants Nike, Inc. (“Nike” or “Defendant”), Adidas America, Inc. (“Adidas” or “Defendant”), New Balance Athletic Shoe, Inc. (“New Balance” or “Defendant”), and Puma North America, Inc. (“Puma” or “Defendant”), collectively “Defendants,” alleges:

PARTIES

1. Plaintiff Akeva is a limited liability company organized and existing under the laws of the state of North Carolina, with its principal place of business located at 100 North Greene Street, Suite 600, Greensboro, North Carolina, 27401.
2. Nike, Inc. is an Oregon corporation with its principal place of business at One Bowerman Drive, Beaverton, Oregon 97005.
3. Adidas America, Inc. is a Delaware corporation with its principal place of business at 5055 N. Greeley Avenue, Portland, Oregon 97217.

4. New Balance Athletic Shoe, Inc. is a Massachusetts corporation with its principal place of business at Brighton Landing, 20 Guest Street, Boston, Massachusetts 02135-2088.

5. Puma North America, Inc. is a Delaware corporation with its principal place of business at 5 Lyberty Way, Westford, Massachusetts 01886.

NATURE OF THE ACTION

6. This is a civil action for infringement of United States Patent Nos. 5,560,126 (“the `126 patent”) (Exhibit A); 7,082,700 (“the `700 patent”) (Exhibit B); 7,127,835 (“the `835 patent”) (Exhibit C); 7,380,350, (“the `350 patent”) (Exhibit D); 7,540,099 (“the `099 patent”) (Exhibit E”); and 7,536,809 (“the `809 patent”) (Exhibit F”) (collectively, the “Asserted Patents”). This action is based upon the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over Defendants by virtue of the fact that, *inter alia*, each Defendant has committed, or aided, abetted, contributed to and/or participated in the commission of, the tortious act of patent infringement that has led to foreseeable harm and injury to Plaintiff, in this judicial district. This Court has personal jurisdiction over each Defendant for the additional reasons set forth below. Therefore, the exercise of jurisdiction over each Defendant would not offend traditional notions of fair play and substantial justice.

9. This Court has personal jurisdiction over Nike by virtue of, *inter alia*, its systematic and continuous contacts with the Middle District of North Carolina. Nike manufactures, assembles and/or supplies products that are and have been used, offered for sale, sold, and purchased in this judicial district. Nike, directly and/or through its distribution

network, places its products within the stream of commerce, which stream is directed at this district, with the knowledge and/or understanding that such products would be sold in this judicial district.

10. Nike does business in this district, including providing products that are used, offered for sale, sold, or have been purchased in this district. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

11. This Court has personal jurisdiction over Adidas by virtue of, *inter alia*, its systematic and continuous contacts with the Middle District of North Carolina. Adidas manufactures, assembles and/or supplies products that are and have been used, offered for sale, sold, and purchased in this judicial district. Adidas, directly and/or through its distribution network, places its products within the stream of commerce, which stream is directed at this district, with the knowledge and/or understanding that such products would be sold in this judicial district.

12. Adidas does business in this district, including providing products that are used, offered for sale, sold, or have been purchased in this district. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

13. This Court has personal jurisdiction over New Balance by virtue of, *inter alia*, its systematic and continuous contacts with the Middle District of North Carolina. New Balance manufactures, assembles and/or supplies products that are and have been used, offered for sale, sold, and purchased in this judicial district. New Balance, directly and/or through its distribution network, places its products within the stream of commerce, which stream is directed at this district, with the knowledge and/or understanding that such products would be sold in this judicial district.

14. New Balance does business in this district, including providing products that are used, offered for sale, sold, or have been purchased in this district. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

15. This Court has personal jurisdiction over Puma by virtue of, *inter alia*, its systematic and continuous contacts with the Middle District of North Carolina. Puma manufactures, assembles and/or supplies products that are and have been used, offered for sale, sold, and purchased in this judicial district. Puma, directly and/or through its distribution network, places its products within the stream of commerce, which stream is directed at this district, with the knowledge and/or understanding that such products would be sold in this judicial district.

16. Puma does business in this district, including providing products that are used, offered for sale, sold, or have been purchased in this district. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

THE PATENTS-IN-SUIT

17. U.S. Patent No. 5,560,126, titled *Athletic Shoe with Improved Sole*, duly and lawfully issued on October 1, 1996. Akeva is the current owner of all rights, title, and interest in the `126 patent. A true and correct copy of the `126 patent is attached hereto as Exhibit A.

18. U.S. Patent No. 7,082,700, titled *Athletic Shoe with Inclined Wall Configuration*, duly and lawfully issued on August 1, 2006. Akeva is the current owner of all rights, title, and interest in the `700 patent. A true and correct copy of the `700 patent is attached hereto as Exhibit B.

19. U.S. Patent No. 7,127,835, titled *Athletic Shoe with Improved Heel Structure*, duly and lawfully issued on October 31, 2006. Akeva is the current owner of the all rights, title,

and interest in the `835 patent. A true and correct copy of the `835 patent is attached hereto as Exhibit C.

20. U.S. Patent No. 7,380,350, titled *Athletic Shoe with Bottom Opening*, duly and lawfully issued on June 3, 2008. Akeva is the current owner of the all rights, title, and interest in the `350 patent. A true and correct copy of the `350 patent is attached hereto as Exhibit D.

21. U.S. Patent No. 7,540,099, titled *Heel Support for Athletic Shoe*, duly and lawfully issued on June 2, 2009. Akeva is the current owner of the all rights, title, and interest in the `099 patent. A true and correct copy of the `099 patent is attached hereto as Exhibit E.

22. U.S. Patent No. 7,536,809, titled *Athletic Shoe with Visible Arch Bridge*, duly and lawfully issued on May 26, 2009. Akeva is the current owner of the all rights, title, and interest in the `809 patent. A true and correct copy of the `809 patent is attached hereto as Exhibit F.

ACTS GIVING RISE TO THIS ACTION

23. Akeva incorporates by reference the allegations set forth in Paragraphs 1-22 of this Complaint as though fully set forth herein.

24. Upon information and belief, Nike has offered for sale and sold in the United States shoes that are covered by one or more of the above named patents. In particular, Nike has offered for sale and/or sold shoes (or families of shoes) including but not limited to those bearing the following designations: Shox, Impax, and Reax athletic shoes, *e.g.*, Shox Elite II TB, Shox Arraw+, Shox Experience+ 2, Shox Cameo 2, Shox Junga II, Shox Saya+, Shox NZ, Shox NZ SI Plus, Shox Navina + 4, Shox Resistance Trn SL, Shox Turmoil, Shox Turmoil+, Shox Turbo +9, Shox Turbo + iD, Shox NZ iD, Shox Turmoil+ iD, Shox Turbo 8, Shox Turbo 9, Shox Vision, Shox Turbo+ VI iD, Shox Classic II SI, Impax PTU, Reax Run 2, Reax Run 3, Reax Run 4,

Reax Revolution, Reax TG, and Reax TR III (hereinafter, collectively and separately, “Nike Accused Products”).

25. Upon information and belief, Adidas has offered for sale and sold in the United States shoes that are covered by one or more of the above named patents. In particular, Adidas has offered for sale and/or sold shoes (or families of shoes) including but not limited to those bearing the designation “Bounce” or a designation that includes the suffix “bounce,”, including but not limited to the following: the Adidas Megabounce and Microbounce athletic shoes, *e.g.*, Megabounce+ 09, Microbounce+ LT, Spectrum Bounce 2 , Microbounce+ Spectrum 2, Microbounce FH Incite, Megabounce+ TruVersa and the TS Bounce Commander (hereinafter, collectively and separately, “Adidas Accused Products”).

26. Upon information and belief, New Balance has offered for sale and sold in the United States shoes that are covered by one or more of the above named patents. In particular, New Balance has offered for sale and/or sold shoes (or families of shoes) including but not limited to those bearing the designation “Zip,” and/or the following designations: the New Balance MR8511, 1306, 8507, MX8520, MR8509, and BB905 athletic shoes (hereinafter, collectively and separately, “New Balance Accused Products”).

27. Upon information and belief, Puma has offered for sale and sold in the United States shoes that are covered by one or more of the above named patents. In particular, Puma has offered for sale and/or sold shoes (or families of shoes) including but not limited to certain of those models bearing the designation “Cell,” and/or the following designations: Cell Cerae II, Cell Cerae, Cell Arane Reflecto, and Yalix (hereinafter, collectively and separately, “Puma Accused Products”).

28. David Meschan is an avid runner who experienced shoe performance problems spanning his years as a runner, primarily during the 1990s. The problems he noticed included among other issues the loss of cushioning and/or spring over the life of the shoe resulting from compression of foam in the heel region during use. To address these problems, Mr. Meschan came up with several ideas for athletic shoes including, without limitation, a cushioning technology for use in the heel region of such shoes. Mr. Meschan sought patent protection for his ideas and became the inventor (or co-inventor) on more than 30 issued patents in the United States pertaining to improvements in athletic shoes. After filing for the first of these patents in the mid-1990s, Mr. Meschan developed prototypes and approached several leading shoe companies to assess their interest.

29. Akeva was founded in October of 1994 by Mr. Meschan as a holding company for his patents and as a vehicle for the licensing to athletic shoe manufacturers. Continuously since Akeva's inception, Mr. Meschan has personally managed Akeva and has remained its largest interest holder. All of Mr. Meschan's patents have been assigned to Akeva. Akeva has never acquired or owned any patents, or rights in patents, other than those patents or pending patent applications with respect to which Mr. Meschan is the inventor or co-inventor. Akeva, under Mr. Meschan's direction, has litigated and licensed one or more of the patents in its portfolio to one or more athletic shoe manufacturers, seeking to protect and enforce its patent rights.

COUNT I – INFRINGEMENT OF THE `126 PATENT BY DEFENDANTS NIKE, ADIDAS AND PUMA

30. Akeva incorporates by reference the allegations set forth in Paragraphs 1-29 of this Complaint as though fully set forth herein.

31. Nike has infringed and is infringing the `126 patent, upon information and belief, by making, using, offering for sale, and/or selling in the United States, without authority, products including but not limited to the Nike Accused Products that are covered by one or more claims of this patent.

32. Nike's acts of direct and/or indirect infringement of the `126 patent have caused, are causing, and, unless such acts are enjoined by the Court, will continue to cause immediate and irreparable harm to Akeva for which there is no adequate remedy at law, and for which Akeva is entitled to injunctive relief under 35 U.S.C. § 283.

33. Nike's direct and/or indirect infringement of the `126 patent, upon information and belief, was willful, continues to be willful, and entitles Akeva to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

34. Nike's acts of infringement of the `126 patent have caused damage to Akeva, and Akeva is entitled to recover from Nike the damages sustained by Akeva as a result of Nike's wrongful acts in an amount subject to proof at trial.

35. Adidas has infringed and is infringing the `126 patent, upon information and belief, by making, using, offering for sale, and/or selling in the United States, without authority, products including but not limited to the Adidas Accused Products that are covered by one or more claims of this patent.

36. Adidas' acts of direct and/or indirect infringement of the `126 patent have caused, are causing, and, unless such acts are enjoined by the Court, will continue to cause immediate and irreparable harm to Akeva for which there is no adequate remedy at law, and for which Akeva is entitled to injunctive relief under 35 U.S.C. § 283.

37. Adidas' direct and/or indirect infringement of the `126 patent, upon information and belief, was willful, continues to be willful, and entitles Akeva to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

38. Adidas' acts of infringement of the `126 patent have caused damage to Akeva, and Akeva is entitled to recover from Adidas the damages sustained by Akeva as a result of Adidas' wrongful acts in an amount subject to proof at trial.

39. Puma has infringed and is infringing the `126 patent, upon information and belief, by making, using, offering for sale, and/or selling in the United States, without authority, products including but not limited to the Puma Accused Products that are covered by one or more claims of this patent.

40. Puma's acts of direct and/or indirect infringement of the `126 patent have caused, are causing, and, unless such acts are enjoined by the Court, will continue to cause immediate and irreparable harm to Akeva for which there is no adequate remedy at law, and for which Akeva is entitled to injunctive relief under 35 U.S.C. § 283.

41. Puma's direct and/or indirect infringement of the `126 patent, upon information and belief, was willful, continues to be willful, and entitles Akeva to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

42. Puma's acts of infringement of the `126 patent have caused damage to Akeva, and Akeva is entitled to recover from Puma the damages sustained by Akeva as a result of Puma's wrongful acts in an amount subject to proof at trial.

COUNT II – INFRINGEMENT OF THE `700 PATENT BY DEFENDANTS NIKE AND PUMA

43. Akeva incorporates by reference the allegations set forth in Paragraphs 1-29 of this Complaint as though fully set forth herein.

44. Nike has infringed and is infringing the `700 patent, upon information and belief, by making, using, offering for sale, and/or selling in the United States, without authority, products including but not limited to the Nike Accused Products that are covered by one or more claims of this patent.

45. Nike's acts of direct and/or indirect infringement of the `700 patent have caused, are causing, and, unless such acts are enjoined by the Court, will continue to cause immediate and irreparable harm to Akeva for which there is no adequate remedy at law, and for which Akeva is entitled to injunctive relief under 35 U.S.C. § 283.

46. Nike's direct and/or indirect infringement of the `700 patent, upon information and belief, was willful, continues to be willful, and entitles Akeva to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

47. Nike's acts of infringement of the `700 patent have caused damage to Akeva, and Akeva is entitled to recover from Nike the damages sustained by Akeva as a result of Nike's wrongful acts in an amount subject to proof at trial.

48. Puma has infringed and is infringing the `700 patent, upon information and belief, by making, using, offering for sale, and/or selling in the United States, without authority, products including but not limited to the Puma Accused Products that are covered by one or more claims of this patent.

49. Puma's acts of direct and/or indirect infringement of the `700 patent have caused, are causing, and, unless such acts are enjoined by the Court, will continue to cause immediate and irreparable harm to Akeva for which there is no adequate remedy at law, and for which Akeva is entitled to injunctive relief under 35 U.S.C. § 283.

50. Puma's direct and/or indirect infringement of the `700 patent, upon information and belief, was willful, continues to be willful, and entitles Akeva to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

51. Puma's acts of infringement of the `700 patent have caused damage to Akeva, and Akeva is entitled to recover from Puma the damages sustained by Akeva as a result of Puma's wrongful acts in an amount subject to proof at trial.

COUNT III – INFRINGEMENT OF THE `835 PATENT BY DEFENDANTS NIKE, ADIDAS, NEW BALANCE, AND PUMA

52. Akeva incorporates by reference the allegations set forth in Paragraphs 1-29 of this Complaint as though fully set forth herein.

53. Nike has infringed and is infringing the `835 patent, upon information and belief, by making, using, offering for sale, and/or selling in the United States, without authority, products including but not limited to the Nike Accused Products that are covered by one or more claims of this patent.

54. Nike's acts of direct and/or indirect infringement of the `835 patent have caused, are causing, and, unless such acts are enjoined by the Court, will continue to cause immediate and irreparable harm to Akeva for which there is no adequate remedy at law, and for which Akeva is entitled to injunctive relief under 35 U.S.C. § 283.

55. Nike's direct and/or indirect infringement of the `835 patent, upon information and belief, was willful, continues to be willful, and entitles Akeva to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

56. Nike's acts of infringement of the `835 patent have caused damage to Akeva, and Akeva is entitled to recover from Nike the damages sustained by Akeva as a result of Nike's wrongful acts in an amount subject to proof at trial.

57. Adidas has infringed and is infringing the `835 patent, upon information and belief, by making, using, offering for sale, and/or selling in the United States, without authority, products including but not limited to the Adidas Accused Products that are covered by one or more claims of this patent.

58. Adidas' acts of direct and/or indirect infringement of the `835 patent have caused, are causing, and, unless such acts are enjoined by the Court, will continue to cause immediate and irreparable harm to Akeva for which there is no adequate remedy at law, and for which Akeva is entitled to injunctive relief under 35 U.S.C. § 283.

59. Adidas' direct and/or indirect infringement of the `835 patent, upon information and belief, was willful, continues to be willful, and entitles Akeva to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

60. Adidas' acts of infringement of the `835 patent have caused damage to Akeva, and Akeva is entitled to recover from Adidas the damages sustained by Akeva as a result of Adidas' wrongful acts in an amount subject to proof at trial.

61. New Balance has infringed and is infringing the `835 patent, upon information and belief, by making, using, offering for sale, and/or selling in the United States, without authority, products including but not limited to the New Balance Accused Products that are covered by one or more claims of this patent.

62. New Balance's acts of direct and/or indirect infringement of the `835 patent have caused, are causing, and, unless such acts are enjoined by the Court, will continue to cause immediate and irreparable harm to Akeva for which there is no adequate remedy at law, and for which Akeva is entitled to injunctive relief under 35 U.S.C. § 283.

63. New Balance's direct and/or indirect infringement of the `835 patent, upon information and belief, was willful, continues to be willful, and entitles Akeva to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

64. New Balance's acts of infringement of the `835 patent have caused damage to Akeva, and Akeva is entitled to recover from New Balance the damages sustained by Akeva as a result of New Balance's wrongful acts in an amount subject to proof at trial.

65. Puma has infringed and is infringing the `835 patent, upon information and belief, by making, using, offering for sale, and/or selling in the United States, without authority, products including but not limited to the Puma Accused Products that are covered by one or more claims of this patent.

66. Puma's acts of direct and/or indirect infringement of the `835 patent have caused, are causing, and, unless such acts are enjoined by the Court, will continue to cause immediate and irreparable harm to Akeva for which there is no adequate remedy at law, and for which Akeva is entitled to injunctive relief under 35 U.S.C. § 283.

67. Puma's direct and/or indirect infringement of the `835 patent, upon information and belief, was willful, continues to be willful, and entitles Akeva to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

68. Puma's acts of infringement of the `835 patent have caused damage to Akeva, and Akeva is entitled to recover from New Balance the damages sustained by Akeva as a result of New Balance's wrongful acts in an amount subject to proof at trial.

COUNT IV – INFRINGEMENT OF THE `350 PATENT BY DEFENDANTS NIKE, ADIDAS AND PUMA

69. Akeva incorporates by reference the allegations set forth in Paragraphs 1-29 of this Complaint as though fully set forth herein.

70. Nike has infringed and is infringing the `350 patent, upon information and belief, by making, using, offering for sale, and/or selling in the United States, without authority, products including but not limited to the Nike Accused Products that are covered by one or more claims of this patent.

71. Nike's acts of direct and/or indirect infringement of the `350 patent have caused, are causing, and, unless such acts are enjoined by the Court, will continue to cause immediate and irreparable harm to Akeva for which there is no adequate remedy at law, and for which Akeva is entitled to injunctive relief under 35 U.S.C. § 283.

72. Nike's direct and/or indirect infringement of the `350 patent, upon information and belief, was willful, continues to be willful, and entitles Akeva to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

73. Nike's acts of infringement of the `350 patent have caused damage to Akeva, and Akeva is entitled to recover from Nike the damages sustained by Akeva as a result of Nike's wrongful acts in an amount subject to proof at trial.

74. Adidas has infringed and is infringing the `350 patent, upon information and belief, by making, using, offering for sale, and/or selling in the United States, without authority, products including but not limited to the Adidas Accused Products that are covered by one or more claims of this patent.

75. Adidas' acts of direct and/or indirect infringement of the `350 patent have caused, are causing, and, unless such acts are enjoined by the Court, will continue to cause immediate and irreparable harm to Akeva for which there is no adequate remedy at law, and for which Akeva is entitled to injunctive relief under 35 U.S.C. § 283.

76. Adidas' direct and/or indirect infringement of the `350 patent, upon information and belief, was willful, continues to be willful, and entitles Adidas to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

77. Adidas' acts of infringement of the `350 patent have caused damage to Akeva, and Akeva is entitled to recover from Adidas the damages sustained by Akeva as a result of Adidas' wrongful acts in an amount subject to proof at trial.

78. Puma has infringed and is infringing the `350 patent, upon information and belief, by making, using, offering for sale, and/or selling in the United States, without authority, products including but not limited to the Puma Accused Products that are covered by one or more claims of this patent.

79. Puma's acts of direct and/or indirect infringement of the '350 patent have caused, are causing, and, unless such acts are enjoined by the Court, will continue to cause immediate and irreparable harm to Akeva for which there is no adequate remedy at law, and for which Akeva is entitled to injunctive relief under 35 U.S.C. § 283.

80. Puma's direct and/or indirect infringement of the '350 patent, upon information and belief, was willful, continues to be willful, and entitles Akeva to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

81. Puma's acts of infringement of the '350 patent have caused damage to Akeva, and Akeva is entitled to recover from Puma the damages sustained by Akeva as a result of Puma's wrongful acts in an amount subject to proof at trial.

COUNT V – INFRINGEMENT OF THE '099 PATENT BY DEFENDANTS NIKE AND ADIDAS

82. Akeva incorporates by reference the allegations set forth in Paragraphs 1-29 of this Complaint as though fully set forth herein.

83. Nike has infringed and is infringing the '099 patent, upon information and belief, by making, using, offering for sale, and/or selling in the United States, without authority, products including but not limited to the Nike Accused Products that are covered by one or more claims of this patent.

84. Nike's acts of direct and/or indirect infringement of the '099 patent have caused, are causing, and, unless such acts are enjoined by the Court, will continue to cause immediate and irreparable harm to Akeva for which there is no adequate remedy at law, and for which Akeva is entitled to injunctive relief under 35 U.S.C. § 283.

85. Nike's direct and/or indirect infringement of the '099 patent, upon information and belief, was willful, continues to be willful, and entitles Akeva to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

86. Nike's acts of infringement of the '099 patent have caused damage to Akeva, and Akeva is entitled to recover from Nike the damages sustained by Akeva as a result of Nike's wrongful acts in an amount subject to proof at trial.

87. Adidas has infringed and is infringing the '099 patent, upon information and belief, by making, using, offering for sale, and/or selling in the United States, without authority, products including but not limited to the Adidas Accused Products that are covered by one or more claims of this patent.

88. Adidas' acts of direct and/or indirect infringement of the '099 patent have caused, are causing, and, unless such acts are enjoined by the Court, will continue to cause immediate and irreparable harm to Akeva for which there is no adequate remedy at law, and for which Akeva is entitled to injunctive relief under 35 U.S.C. § 283.

89. Adidas' direct and/or indirect infringement of the '099 patent, upon information and belief, was willful, continues to be willful, and entitles Akeva to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

90. Adidas' acts of infringement of the '099 patent have caused damage to Akeva, and Akeva is entitled to recover from Adidas the damages sustained by Akeva as a result of Adidas' wrongful acts in an amount subject to proof at trial.

**COUNT VI – INFRINGEMENT OF THE `809 PATENT BY DEFENDANTS NIKE,
ADIDAS AND NEW BALANCE**

91. Akeva incorporates by reference the allegations set forth in Paragraphs 1-29 of this Complaint as though fully set forth herein.

92. Nike has infringed and is infringing the `809 patent, upon information and belief, by making, using, offering for sale, and/or selling in the United States, without authority, products including but not limited to the Nike Accused Products that are covered by one or more claims of this patent.

93. Nike's acts of direct and/or indirect infringement of the `809 patent have caused, are causing, and, unless such acts are enjoined by the Court, will continue to cause immediate and irreparable harm to Akeva for which there is no adequate remedy at law, and for which Akeva is entitled to injunctive relief under 35 U.S.C. § 283.

94. Nike's direct and/or indirect infringement of the `809 patent, upon information and belief, was willful, continues to be willful, and entitles Akeva to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

95. Nike's acts of infringement of the `809 patent have caused damage to Akeva, and Akeva is entitled to recover from Nike the damages sustained by Akeva as a result of Nike's wrongful acts in an amount subject to proof at trial.

96. Adidas has infringed and is infringing the `809 patent, upon information and belief, by making, using, offering for sale, and/or selling in the United States, without authority, products including but not limited to the Adidas Accused Products that are covered by one or more claims of this patent.

97. Adidas' acts of direct and/or indirect infringement of the '809 patent have caused, are causing, and, unless such acts are enjoined by the Court, will continue to cause immediate and irreparable harm to Akeva for which there is no adequate remedy at law, and for which Akeva is entitled to injunctive relief under 35 U.S.C. § 283.

98. Adidas' direct and/or indirect infringement of the '809 patent, upon information and belief, was willful, continues to be willful, and entitles Akeva to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

99. Adidas' acts of infringement of the '809 patent have caused damage to Akeva, and Akeva is entitled to recover from Adidas the damages sustained by Akeva as a result of Adidas' wrongful acts in an amount subject to proof at trial.

100. New Balance has infringed and is infringing the '809 patent, upon information and belief, by making, using, offering for sale, and/or selling in the United States, without authority, products including but not limited to the New Balance Accused Products that are covered by one or more claims of this patent.

101. New Balance's acts of direct and/or indirect infringement of the '809 patent have caused, are causing, and, unless such acts are enjoined by the Court, will continue to cause immediate and irreparable harm to Akeva for which there is no adequate remedy at law, and for which Akeva is entitled to injunctive relief under 35 U.S.C. § 283.

102. New Balance's direct and/or indirect infringement of the '809 patent, upon information and belief, was willful, continues to be willful, and entitles Akeva to increased damages under 35 U.S.C. § 284 and to attorney fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

103. New Balance's acts of infringement of the '809 patent have caused damage to Akeva, and Akeva is entitled to recover from New Balance the damages sustained by Akeva as a result of New Balance's wrongful acts in an amount subject to proof at trial.

DEMAND FOR JURY TRIAL

104. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Akeva demands a trial by jury of this action.

PRAYER FOR RELIEF

WHEREFORE, Akeva prays for judgment and seeks relief against Defendants as follows:

A. That Defendants Nike, Adidas, New Balance and/or Puma have infringed directly and/or indirectly and continue to directly and/or indirectly infringe one or more claims of the '126, '700, '835, '350, '099 and/or '809 patents;

B. That Defendants Nike, Adidas, New Balance and/or Puma be permanently enjoined from further infringement of the '126, '700, '835, '350, '099 and/or '809 patents;

C. That all damages sustained by Akeva as a result of Defendants' acts of infringement are accounted for;

D. That this case is exceptional under 35 U.S.C. § 285 or as otherwise permitted by law;

E. That Plaintiff be awarded actual damages with prejudgment interest;

F. That Plaintiff be awarded with the attorney fees, costs and expenses incurred prosecuting this action;

G. That Plaintiff be awarded increased damages pursuant to 35 U.S.C. § 284; and

H. That Plaintiff be awarded for such other and further relief as this Court may deem just and proper.

DATED: August 27, 2009

Respectfully submitted,

ATTORNEYS FOR AKEVA

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