

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

**CUSHION TECHNOLOGIES, LLC,
A Texas Limited Liability Company**

Plaintiff,

v.

**AMERICAN SPORTING GOODS CORP.,
BROOKS SPORTS, INC., RUSSELL
CORPORATION, HI-TEC SPORTS USA,
INC., HI-TEC SPORTS UK, LTD., THE
NORTH FACE, INC., VF CORPORATION,
PUMA NORTH AMERICA, INC., PUMA AG
RUDOLPH DASSLER SPORT, RIDDELL
SPORTS GROUP, INC., RIDDELL, INC.,
THE STRIDE RITE CORPORATION,
RED WING SHOE COMPANY, INC.,
PROPÉT USA, INC., ROCKY BRANDS, INC.,
ASOLO USA, INC., ASOLO S.P.A., TECNICA
USA CORP., TECNICA S.P.A, DIADORA
AMERICA, INC., DIADORA-INVICTA
S.P.A., SPRINGBOOST USA LTD.,
SPRINGBOOST S.A., HEAD USA, INC.,
HEAD N.V., VIDA SHOES
INTERNATIONAL, INC., PRINCE SPORTS,
INC., BABOLAT VS NORTH AMERICA,
INC., BABOLAT VS, WILSON SPORTING
GOODS CO., SALOMON/NORTH
AMERICA, INC., SALOMON S.A., AMER
SPORTS CORPORATION, HELLY HANSEN
(U.S.) INC., HELLY HANSEN ASA, YONEX
CORPORATION, U.S.A., AND ECG2, LLC**

Defendants.

**Civil Action No. 2:07cv109 (TJW)
JURY TRIAL DEMANDED**

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

For its First Amended Complaint against American Sporting Goods Corp. (“ASG”), Brooks Sports, Inc. (“Brooks”), Russell Corporation (“Russell”), Hi-Tec Sports USA, Inc. (“Hi-Tec USA”), Hi-Tec Sports, UK, Ltd. (“Hi-Tec UK”), The North Face, Inc. (“North Face”), VF Corporation (“VF”), Puma North America, Inc. (“Puma NA”), Puma AG Rudolph Dassler Sport

("Puma AG"), Riddell Sports Group, Inc. ("Riddell Sports Group"), Riddell, Inc. ("Riddell Inc."), the Stride Rite Corporation ("Stride Rite"), Red Wing Shoe Company, Inc. ("Red Wing"), Propét USA, Inc. ("Propét"), Rocky Brands, Inc. ("Rocky"), Asolo USA, Inc. ("Asolo USA"), Asolo S.p.A. ("Asolo SpA"), Tecnica USA Corp. ("Tecnica USA"), Tecnica S.p.A. ("Tecnica SpA"), Diadora America, Inc. ("Diadora America"), Diadora-Invicta S.p.A. ("Diadora SpA"), Springboost USA Ltd. ("Springboost USA"), Springboost S.A. ("Springboost SA"), Head USA, Inc. ("Head USA"), Head N.V. ("Head NV"), Vida Shoes International, Inc. ("Vida"), Prince Sports, Inc. ("Prince"), Babolat VS North America, Inc. ("Babolat NA"), Babolat VS ("Babolat VS"), Wilson Sporting Goods Co. ("Wilson"), Salomon/North America, Inc. ("Salomon NA"), Salomon S.A. ("Salomon SA"), Amer Sports Corporation ("Amer Sports"), Helly Hansen (U.S.) Inc. ("Helly Hansen US"), Helly Hansen ASA ("Helly Hansen ASA"), Yonex Corporation U.S.A. ("Yonex"), and ECG2, LLC ("ECG2") (collectively the "Defendants"), Plaintiff Cushion Technologies, LLC ("Cushion") alleges as follows.

PARTIES

1. Cushion 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 ASG is a Delaware corporation with its principal place of business at 300 East Orangethorpe Avenue, Anaheim, California 92801. Defendant ASG is registered to do business in Texas and has appointed BlumbergExcelsior Corporate Services, Inc., 1220 North Market Street, Suite 806, Wilmington, Delaware 19801, as its service agent.

3. On information and belief, Defendant Brooks is a Washington corporation with its principal place of business at 19910 North Creek Parkway, Suite 200, Bothell, Washington 98011. Brooks is registered to do business in Texas and has appointed Corporation Service

Company, 6500 Harbour Heights Parkway #400, Mukilteo, Washington 98275, as its service agent.

4. On information and belief, Defendant Russell is a Delaware corporation with its principal place of business at 3330 Cumberland Boulevard, Suite 800, Atlanta, Georgia 30339. Russell is registered to do business in Texas and has appointed The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, New Castle, Delaware, 19801, as its service agent.

5. On information and belief, Defendant Hi-Tec Sports USA, Inc. is a California corporation with its principal place of business at 4801 Stoddard Road, Modesto, California 95356. Hi-Tec has appointed Michael Macko, 1014 16th Street, Modesto, California, 95350, as its service agent.

6. On information and belief, Defendant Hi-Tec Sports UK, Ltd. is a United Kingdom corporation with its principal place of business at Aviation Way, Southend on Sea, EN SS2 6GH, United Kingdom.

7. On information and belief, Defendant North Face is a Colorado corporation with its principal place of business at 2013 Farallon Drive, San Leandro, California 94577. North Face has appointed the Corporation Service Company, 1560 Broadway, Suite 2090, Denver, Colorado, 80202, as its service agent.

8. On information and belief, Defendant VF is a Pennsylvania corporation with its principal place of business at 105 Corporate Center Boulevard, Greensboro, North Carolina 27408. VF has appointed the Corporation Service Company, 2704 Commerce Drive, Harrisburg, Pennsylvania, 17110, as its service agent.

9. On information and belief, Defendant Puma NA is a Delaware corporation with its principal place of business at 5 Lyberty Way, Westford, Massachusetts, 01886. Puma NA is registered to do business in Texas and has appointed CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201, as its service agent.

10. On information and belief, Defendant Puma AG is a German corporation with its principal place of business at Wurzburger Strasse 13, Herzogenaurach D 91074, Germany.

11. On information and belief, Defendant Riddell Sports Group is a Delaware corporation with its principal place of business at 9801 West Higgins Road, Suite 800, Rosemont, Illinois 60018. Riddell Sports Group has appointed Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, as its service agent.

12. On information and belief, Defendant Riddell Inc. is an Illinois corporation with its principal place of business at 9801 West Higgins Road, Suite 800, Rosemont, Illinois 60018. Riddell Inc. is registered to do business in Texas and has appointed Cecil Jones, 6848 Alamo Downs Parkway, San Antonio, Texas 78238, as its service agent.

13. On information and belief, Defendant Stride Rite is a Massachusetts corporation with its principal place of business at 191 Spring Street, Lexington, Massachusetts 02173. Stride Rite has appointed corporate General Counsel, Charles W. Redepening, Jr., 191 Spring Street, Lexington, Massachusetts 02173, as its service agent.

14. On information and belief, Defendant Red Wing is a Minnesota corporation with its principal place of business at 314 Main Street, Red Wing, Minnesota, 55066. Red Wing has appointed National Registered Agents, Inc., 1614 Sidney Baker Street, Kerrville, Texas 78028, as its service agent.

15. On information and belief, Defendant Propét is a Washington corporation with its principal place of business at 2415 West Valley Highway N, Auburn, Washington 98001. Propét has appointed Yao-Tsu Wang, 2415 West Valley Highway N, Auburn, Washington 98001, as its service agent.

16. On information and belief, Defendant Rocky is an Ohio corporation with its principal place of business at 39 East Canal Street, Nelsonville, Ohio 45764. Rocky has appointed Acme Agent, Inc., 41 South High Street, Suite 2800, Columbus, Ohio 43215, as its service agent.

17. On information and belief, Defendant Asolo USA is a New Hampshire corporation with its principal place of business at 190 Hanover Street, Lebanon, New Hampshire 03766. Asolo USA has appointed Bruce Franks, 190 Hanover Street, Lebanon, New Hampshire 03766, as its service agent.

18. On information and belief, Defendant Asolo SpA is an Italian corporation with its principal place of business at Via della Industrie 2, 31040, Nervesa della Battaglia (TV), Italy.

19. On information and belief, Defendant Tecnica USA is a New Hampshire corporation with its principal place of business at 19 Technology Drive, West Lebanon, New Hampshire 03784. Tecnica USA has appointed Susan Harrington, 19 Technology Drive, West Lebanon, New Hampshire 03784, as its service agent.

20. On information and belief, Defendant Tecnica SpA is an Italian corporation with its principal place of business at Via Fanta D'Italia 56, Giavera del Montello, 31040, Treviso, Italy.

21. On information and belief, Defendant Diadora America is a Washington corporation with its principal place of business at 6102 South 226th Street, Kent, Washington

98032. Diadora has appointed Corpserve, Inc., 1001 4th Avenue, Suite 4400, Seattle, Washington 98154, as its service agent.

22. On information and belief, Defendant Diadora SpA is an Italian corporation with its principal place of business at Montello 80, 31031, Treviso, Caerano San Marco, Italy.

23. On information and belief, Defendant Springboost USA is a Delaware corporation with its principal place at 135 Beaver Street, Suite 400, Waltham, Massachusetts 02452. Springboost USA has appointed National Corporate Research, Ltd., 615 South DuPont Highway, Dover, Delaware 19901, as its service agent.

24. On information and belief, Defendant Springboost S.A. is a Swiss corporation with its principal place of business at EPFL-PSE A, 1015 Lausanne, Switzerland.

25. Upon information and belief, Defendant Head USA is a Delaware corporation with its principal place of business at Shore Pointe, 1 Selleck Street, Norwalk, Connecticut 06855. Head USA has appointed the Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington Delaware 19801, as its service agent.

26. Upon information and belief, Defendant Head NV is a Dutch corporation with its principal place of business Rokin 55, 1012 KK Amsterdam, The Netherlands.

27. On information and belief, Defendant Vida is a New York corporation with its principal place of business at 29 West 56th Street, 5th Floor, New York, New York 10019. Vida is registered to do business in the Texas and service of process on Vida may be effectuated by delivery on Vida corporate officer Victor H. Dabah, 29 West 56th Street, 5th Floor, New York, New York 10019. Upon information and belief, Vida is licensed by Head NV and Head USA to, at a minimum, manufacture, distribute and sell shoes under the HEAD brand in the United States.

28. Upon information and belief, Defendant Prince is a Delaware corporation with its principal place of business at One Advantage Court, Bordentown, New Jersey 08505. Prince has appointed Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, as its service agent.

29. Upon information and belief, Defendant Babolat NA is a Colorado corporation with its principal place of business at 650 South Taylor Avenue, Louisville, Colorado 80027. Babolat NA has appointed Kenneth Farris, 650 South Taylor Avenue, Louisville, Colorado 80027, as its service agent.

30. Upon information and belief, Defendant Babolat VS is a French corporation with its principal place of business at 93 Rue Andre Bollier, 69007 Lyon, France.

31. Upon information and belief, Defendant Wilson is a Delaware corporation with its principal place of business at 8700 West Bryn Mawr Avenue, Chicago, Illinois 60631. Wilson is registered to do business in the Texas and has appointed U.S. Corporation Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701, as its service agent.

32. Upon information and belief, Defendant Salomon NA is a Delaware corporation with its principal place of business at 5055 North Greely Avenue, Portland, Oregon 97217. Salomon NA has appointed DWT Oregon Corp., 1300 SW 5th Avenue, Suite 2300, Portland, Oregon 97201, as its service agent.

33. Upon information and belief, Defendant Salomon SA is a French corporation with its principal place of business at Siege Social, Metz-Tessy, FR-74996 Annecy-Cedex 9, France.

34. Upon information and belief, Defendant Amer Sports is a Finnish corporation with its principal place of business at Mäkelänkatu 91, FI-00610 Helsinki, P.O. Box 130, FI-00601 Helsinki, Finland.

35. Upon information and belief, Defendant Helly Hansen US is a Washington corporation with its principal place of business at Kenyon Center, 3326 160th Avenue SE, Suite 200, Bellevue, Washington 98008. Helly Hansen US has appointed PTSGE Corp., 925 Fourth Avenue, Suite 2900, Seattle, Washington, 98104, as its service agent.

36. Upon information and belief, Defendant Helly Hansen ASA is a Norwegian corporation with its principal place of business at Solgaard Skog 139, N-1599 MOSS, P.O. Box 218, N-1501 MOSS, Norway.

37. Upon information and belief, Defendant Yonex is a California corporation with its principal place of business at 20140 S. Western Avenue, Torrance, California 90501. Yonex has appointed Chitose Renge, 28846 Cedarbluff Drive, Rancho Palos Verdes, California 90275, as its service agent.

38. Upon information and belief, Defendant ECG2 is a Missouri corporation with its principal place of business at 2047 Westport Center Drive, St. Louis, Missouri 63146. ECG2 has appointed CT Corporation Trust, 120 S. Central, Suite 400, St. Louis, Missouri 63101, as its service agent.

JURISDICTION AND VENUE

39. 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).

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

41. Upon information and belief, Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to their substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

COUNT 1
INFRINGEMENT OF U.S. PATENT NO. 5,060,401

42. Cushion is the owner by assignment of United States Patent No. 5,060,401 ("the '401 patent") titled "Footwear Cushioning Spring," a true copy of which is attached as Exhibit A. The '401 patent was issued on October 29, 1991.

43. 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 Markman ruling is attached as Exhibit B.

44. The '401 patent was the subject of a reexamination proceeding (reexamination request no. 90/005,556) ("'401 patent Reexamination") before the United States Patent and Trademark Office ("USPTO"). A copy of the USPTO's Board of Patent Appeals and Interferences' unanimous decision confirming the patentability of the '401 patent's independent claims 1 and 16 is attached as Exhibit C and reflected in the Ex Parte Reexamination Certificate US 5,060,401 C1, which is appended to the copy of the '401 patent provided in Exhibit A.

45. Defendant ASG has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and

practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. Exemplar infringing articles manufactured, sold and/or offered for sale by ASG and/or its agents in the United States are shown in Exhibit F at pp. 1-3. Defendant ASG is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

46. Defendant Brooks has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Brooks and/or its agents in the United States is shown in Exhibit F at p. 4. Defendant Brooks is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

47. Defendant Russell has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Russell and/or its agents in the United States is shown in Exhibit F at p. 4. Defendant Russell is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

48. Defendant Hi-Tec USA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Hi-Tec USA and/or its agents in the United States is shown in Exhibit F at p. 5. Defendant Hi-Tec USA is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

49. Defendant Hi-Tec UK has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Hi-Tec UK and/or its agents in the United States is shown in Exhibit F at p. 5. Defendant Hi-Tec UK is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

50. Defendant North Face has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of

the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by North Face and/or its agents in the United States is shown in Exhibit F at p. 6. Defendant North Face is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

51. Defendant VF has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by VF and/or its agents in the United States is shown in Exhibit F at p. 6. Defendant VF is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

52. Defendant Puma NA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Puma NA and/or its agents in the United States is shown in Exhibit F at p. 7. Defendant Puma NA is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

53. Defendant Puma AG has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to

the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Puma AG and/or its agents in the United States is shown in Exhibit F at p. 7. Defendant Puma AG is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

54. Defendant Riddell Sports Group has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Riddell Sports Group and/or its agents in the United States is shown in Exhibit F at p. 8. Defendant Riddell Sports Group is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

55. Defendant Riddell Inc. has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Riddell Inc. and/or its agents in the United States is shown in Exhibit F

at p. 8. Defendant Riddell Inc. is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

56. Defendant Stride Rite has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Stride Rite and/or its agents in the United States is shown in Exhibit F at p. 9. Defendant Stride Rite is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

57. Defendant Red Wing has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Red Wing and/or its agents in the United States is shown in Exhibit F at p. 11. Defendant Red Wing is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

58. Defendant Propét has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United

States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Propét and/or its agents in the United States is shown in Exhibit F at p. 12. Defendant Propét is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

59. Defendant Rocky has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Rocky and/or its agents in the United States is shown in Exhibit F at p. 13. Defendant Rocky is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

60. Defendant Asolo USA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Asolo USA and/or its agents in the United States is shown in Exhibit F

at p. 14. Defendant Asolo USA is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

61. Defendant Asolo SpA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Asolo SpA and/or its agents in the United States is shown in Exhibit F at p. 14. Defendant Asolo SpA is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

62. Defendant Tecnica USA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Tecnica USA and/or its agents in the United States is shown in Exhibit F at p. 15. Defendant Tecnica USA is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

63. Defendant Tecnica SpA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United

States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Tecnica SpA and/or its agents in the United States is shown in Exhibit F at p. 15. Defendant Tecnica SpA is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

64. Defendant Diadora America has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Diadora America and/or its agents in the United States is shown in Exhibit F at p. 16. Defendant Diadora America is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

65. Defendant Diadora SpA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Diadora SpA and/or its agents in the United States is shown in Exhibit

F at p. 16. Defendant Diadora SpA is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

66. Defendant Springboost USA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Springboost USA and/or its agents in the United States is shown in Exhibit F at p. 17. Defendant Springboost USA is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

67. Defendant Springboost SA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Springboost SA and/or its agents in the United States is shown in Exhibit F at p. 17. Defendant Springboost SA is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

68. Defendant Head USA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United

States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Head USA and/or its agents in the United States is shown in Exhibit F at p. 18. Defendant Head USA is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

69. Defendant Head NV has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Head NV and/or its agents in the United States is shown in Exhibit F at p. 18. Defendant Head NV is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

70. Defendant Vida has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Vida and/or its agents in the United States is shown in Exhibit F at p.

18. Defendant Vida is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

71. Defendant Prince has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Prince and/or its agents in the United States is shown in Exhibit F at p.

19. Defendant Prince is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

72. Defendant Babolat NA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Babolat NA and/or its agents in the United States is shown in Exhibit F at p. 20. Defendant Babolat NA is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

73. Defendant Babolat VS has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United

States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Babolat VS and/or its agents in the United States is shown in Exhibit F at p. 20. Defendant Babolat VS is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

74. Defendant Wilson has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Wilson and/or its agents in the United States is shown in Exhibit F at p. 21. Defendant Wilson is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

75. Defendant Salomon NA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Salomon NA and/or its agents in the United States is shown in Exhibit

F at p. 22. Defendant Salomon NA is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

76. Defendant Salomon SA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Salomon SA and/or its agents in the United States is shown in Exhibit F at p. 22. Defendant Salomon SA is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

77. Defendant Amer Sports has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. Exemplar infringing articles manufactured, sold and/or offered for sale by Amer Sports and/or its agents in the United States are shown in Exhibit F at pp. 21-22. Defendant Amer Sports is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

78. Defendant Helly Hansen US has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and

elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Helly Hansen US and/or its agents in the United States is shown in Exhibit F at p. 23. Defendant Helly Hansen US is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

79. Defendant Helly Hansen ASA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Helly Hansen ASA and/or its agents in the United States is shown in Exhibit F at p. 23. Defendant Helly Hansen ASA is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

80. Defendant Yonex has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Yonex and/or its agents in the United States is shown in Exhibit F at p.

24. Defendant Yonex is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

81. Defendant ECG2 has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '401 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '401 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by ECG2 and/or its agents in the United States is shown in Exhibit F at p.

8. Defendant ECG2 is thus liable for infringement of the '401 patent pursuant to 35 U.S.C. § 271.

82. The above Defendants, upon information and belief, have actively induced and are actively inducing infringement of the '401 patent and are liable for contributory infringement of the '401 patent.

83. Upon 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.

84. Upon information and belief, at least after the filing of the present Complaint, the Defendants have infringed and continue to willfully infringe the '401 Patent.

85. As a result of the above Defendants' infringement of the '401 patent, Cushion has suffered monetary damages that are compensable under 35 U.S.C. § 284 in an amount not yet determined, and will continue to suffer such monetary damages in the future unless Defendants' infringing activities are permanently enjoined by this Court.

86. Unless permanent injunctions are issued enjoining these Defendants and their agents, servants, employees, attorneys, representatives, affiliates, and all other acting on their behalf from infringing the '401 patent, Cushion will be greatly and irreparably harmed.

87. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and Cushion is thus entitled to an award of its reasonable attorneys' fees.

COUNT 2
INFRINGEMENT OF U.S. PATENT NO. 5,279,051

88. Cushion is the owner by assignment of United States Patent No. 5,279,051 ("the '051 patent") titled "Footwear Cushioning Spring," a true copy of which is attached as Exhibit D. The '051 patent was issued on January 18, 1994.

89. 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 Markman ruling is attached as Exhibit B.

90. The '051 patent was the subject of a reexamination proceeding (reexamination request no. 90/005,557) ("'051 patent Reexamination) before the United States Patent and Trademark Office ("USPTO"). A copy of the USPTO's Board of Patent Appeals and Interferences' unanimous decision confirming the patentability of the '051 patent's independent claims 1, 4, 46 and 47 is attached as Exhibit E and reflected in the Ex Parte Reexamination Certificate US 5,279,051 C2, which is appended to the copy of the '051 patent provided in Exhibit D.

91. Defendant ASG has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and

practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. Exemplar infringing articles manufactured, sold and/or offered for sale by ASG and/or its agents in the United States are shown in Exhibit F at pp. 1-3. Defendant ASG is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

92. Defendant Brooks has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Brooks and/or its agents in the United States is shown in Exhibit F at p. 4. Defendant Brooks is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

93. Defendant Russell has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Russell and/or its agents in the United States is shown in Exhibit F at p. 4. Defendant Russell is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

94. Defendant Hi-Tec USA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Hi-Tec USA and/or its agents in the United States is shown in Exhibit F at p. 5. Defendant Hi-Tec USA is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

95. Defendant Hi-Tec UK has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Hi-Tec UK and/or its agents in the United States is shown in Exhibit F at p. 5. Defendant Hi-Tec UK is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

96. Defendant North Face has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of

the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by North Face and/or its agents in the United States is shown in Exhibit F at p. 6. Defendant North Face is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

97. Defendant VF has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by VF and/or its agents in the United States is shown in Exhibit F at p. 6. Defendant VF is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

98. Defendant Puma NA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Puma NA and/or its agents in the United States is shown in Exhibit F at p. 7. Defendant Puma NA is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

99. Defendant Puma AG has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to

the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Puma AG and/or its agents in the United States is shown in Exhibit F at p. 7. Defendant Puma AG is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

100. Defendant Riddell Sports Group has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Riddell Sports Group and/or its agents in the United States is shown in Exhibit F at p. 8. Defendant Riddell Sports Group is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

101. Defendant Riddell Inc. has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Riddell Inc. and/or its agents in the United States is shown in Exhibit F

at p. 8. Defendant Riddell Inc. is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

102. Defendant Stride Rite has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Stride Rite and/or its agents in the United States is shown in Exhibit F at p. 9. Defendant Stride Rite is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

103. Defendant Red Wing has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Red Wing and/or its agents in the United States is shown in Exhibit F at p. 11. Defendant Red Wing is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

104. Defendant Propét has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United

States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Propét and/or its agents in the United States is shown in Exhibit F at p. 12. Defendant Propét is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

105. Defendant Rocky has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Rocky and/or its agents in the United States is shown in Exhibit F at p. 13. Defendant Rocky is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

106. Defendant Asolo USA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Asolo USA and/or its agents in the United States is shown in Exhibit F

at p. 14. Defendant Asolo USA is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

107. Defendant Asolo SpA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Asolo SpA and/or its agents in the United States is shown in Exhibit F at p. 14. Defendant Asolo SpA is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

108. Defendant Tecnica USA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Tecnica USA and/or its agents in the United States is shown in Exhibit F at p. 15. Defendant Tecnica USA is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

109. Defendant Tecnica SpA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United

States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Tecnica SpA and/or its agents in the United States is shown in Exhibit F at p. 15. Defendant Tecnica SpA is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

110. Defendant Diadora America has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Diadora America and/or its agents in the United States is shown in Exhibit F at p. 16. Defendant Diadora America is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

111. Defendant Diadora SpA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Diadora SpA and/or its agents in the United States is shown in Exhibit

F at p. 16. Defendant Diadora SpA is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

112. Defendant Springboost USA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Springboost USA and/or its agents in the United States is shown in Exhibit F at p. 17. Defendant Springboost USA is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

113. Defendant Springboost SA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Springboost SA and/or its agents in the United States is shown in Exhibit F at p. 17. Defendant Springboost SA is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

114. Defendant Head USA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United

States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Head USA and/or its agents in the United States is shown in Exhibit F at p. 18. Defendant Head USA is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

115. Defendant Head NV has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Head NV and/or its agents in the United States is shown in Exhibit F at p. 18. Defendant Head NV is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

116. Defendant Vida has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Vida and/or its agents in the United States is shown in Exhibit F at p.

18. Defendant Vida is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

117. Defendant Prince has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Prince and/or its agents in the United States is shown in Exhibit F at p.

19. Defendant Prince is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

118. Defendant Babolat NA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Babolat NA and/or its agents in the United States is shown in Exhibit F at p. 20. Defendant Babolat NA is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

119. Defendant Babolat VS has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United

States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Babolat VS and/or its agents in the United States is shown in Exhibit F at p. 20. Defendant Babolat VS is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

120. Defendant Wilson has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Wilson and/or its agents in the United States is shown in Exhibit F at p. 21. Defendant Wilson is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

121. Defendant Salomon NA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Salomon NA and/or its agents in the United States is shown in Exhibit

F at p. 22. Defendant Salomon NA is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

122. Defendant Salomon SA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Salomon SA and/or its agents in the United States is shown in Exhibit F at p. 22. Defendant Salomon SA is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

123. Defendant Amer Sports has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. Exemplar infringing articles manufactured, sold and/or offered for sale by Amer Sports and/or its agents in the United States are shown in Exhibit F at pp. 21-22. Defendant Amer Sports is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

124. Defendant Helly Hansen US has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and

elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Helly Hansen US and/or its agents in the United States is shown in Exhibit F at p. 23. Defendant Helly Hansen US is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

125. Defendant Helly Hansen ASA has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Helly Hansen ASA and/or its agents in the United States is shown in Exhibit F at p. 23. Defendant Helly Hansen ASA is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

126. Defendant Yonex has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by Yonex and/or its agents in the United States is shown in Exhibit F at p.

24. Defendant Yonex is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

127. Defendant ECG2 has been and now is directly, jointly, and/ or indirectly infringing by way of inducing infringement, upon information and belief, and/or contributing to the infringement of the '051 patent in Texas, in this judicial district, and elsewhere in the United States by, among other things, manufacturing, selling, and/or offering for sale shoes and practicing and/or inducing others to practice methods that are covered by one or more claims of the '051 patent to the injury of Cushion. An exemplar infringing article manufactured, sold and/or offered for sale by ECG2 and/or its agents in the United States is shown in Exhibit F at p.

8. Defendant ECG2 is thus liable for infringement of the '051 patent pursuant to 35 U.S.C. § 271.

128. The above Defendants, upon information and belief, have actively induced and are actively inducing infringement of the '051 patent and are liable for contributory infringement of the '051 patent.

129. Upon 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.

130. Upon information and belief, at least after the filing of the present Complaint, the Defendants have infringed and continue to willfully infringe the '051 Patent.

131. As a result of the above Defendants' infringement of the '051 patent, Cushion has suffered monetary damages that are compensable under 35 U.S.C. § 284 in an amount not yet determined, and will continue to suffer such monetary damages in the future unless Defendants' infringing activities are permanently enjoined by this Court.

132. Unless permanent injunctions are issued enjoining these Defendants and their agents, servants, employees, attorneys, representatives, affiliates, and all other acting on their behalf from infringing the '051 patent, Cushion will be greatly and irreparably harmed.

133. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and Cushion is thus entitled to an award of its reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Cushion requests that this Court enter:

1. A judgment in favor of Cushion that Defendants have infringed, directly and indirectly, by way of inducing and/or contributing to the infringement of the '401 and '051 patents, and that such infringement was willful;
2. A permanent injunction, enjoining Defendants 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 and '051 patents;
3. A judgment and order requiring Defendants to pay Cushion its damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '401 and '051 patents as provided under 35 U.S.C. § 284;
4. An award to Cushion for enhanced damages resulting from the knowing, deliberate, and willful nature of Defendants' prohibited conduct with notice being made at least as early as the date of the filing of this Complaint, as provided under 35 U.S.C. § 284;
5. An award to Cushion of restitution of the benefits Defendants' have gained through their unfair, deceptive, or illegal acts;

6. A judgment and order disgorging Defendants of all profits unjustly earned because of its conversion in an amount to be determined by the trier of fact and to be increased as provided by applicable law due to Defendants knowing, deliberate, and willful violation of the law;

7. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Cushion its reasonable attorneys' fees; and

8. Any and all other relief for which the Court may deem Cushion entitled.

DEMAND FOR JURY TRIAL

Plaintiff Cushion, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: May 29, 2007

Respectfully submitted,
CUSHION TECHNOLOGIES, LLC

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ATTORNEYS FOR PLAINTIFF
CUSHION TECHNOLOGIES, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email and/or fax, on this the 29th day of May, 2007.

A handwritten signature in black ink, appearing to read "Eric M. Albritton", written over a horizontal line.

Eric M. Albritton