UNITED STATES DISTRICT COURT
IN THE NORTHERN DISTRICT OF ILLINOIS

ARQUEST, INC.,

Plaintiff,

v.

RHONDA TRACY,

Defendant.

02C 1649

Civil Action No._____
Jury Trial Demanded

JUDGE MORAN

MAGISTRATE JUDGE KEYS

COMPLAINT

Plaintiff, Arquest, Inc. ("Arquest") for its Complaint against Defendant Rhonda Tracy ("Tracy") alleges as follows:

THE PARTIES

1. Plaintiff Arquest is an Arkansas corporation having a principal place of business at Highland Industrial Park, Building 10000, East Camden, Arkansas 71701.

2. Upon information and belief, defendant Rhonda Tracy ("Tracy") is an individual residing within this judicial district at 233 Grandview, Glen Ellyn, Illinois 60137.

3. Upon information and belief, Defendant Tracy is the owner of United States Patent No. 5,797,824 (the "'824 patent") entitled "Disposable Diaper with Padded Waistband and Legholes," which issued on August 25, 1998, naming Defendant Tracy as the inventor. A copy of the '824 patent is annexed hereto as Exhibit A.

JURISDICTION AND VENUE

4. This is a civil action arising under the Patent Laws of the United States, Title 35 United States Code, and the Federal Declaratory Judgment Act, Title 28 United States

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Code §§ 2201 and 2202. This action presents a case of actual, present, and substantial controversy between the parties within the jurisdiction of this Court.

5. Jurisdiction in this Court is based upon 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202 as there is a controversy between the parties involving the non-infringement and invalidity of a United States patent.

6. The Court has personal jurisdiction over defendant Tracy because she is a resident of this judicial district. Defendant Tracy is also subject to personal jurisdiction because she has purposely availed herself of the privilege of conducting activities within this judicial district by filing suit for infringement of the '824 patent in this judicial district against other parties in an action entitled *Tracy v. Jewel Food Stores et al.,* No. 99-C-2736, presently pending before Judge Kocoras.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391.

BACKGROUND

8. Plaintiff Arquest is in the business of manufacturing and selling diapers and training pants. Plaintiff Arquest currently sells, and has in the past sold, *inter alia*, diapers to Wal-Mart, Inc. ("Wal-Mart") that are marketed and sold by Wal-Mart under the trade name "DRI-BOTTOMS" in this judicial district and elsewhere in the United States.

9. In a currently pending suit in this judicial district, *Tracy v. Jewel Food Stores et al.,* No. 99-C-2736, presently before Judge Kocoras, where Wal-Mart is a named defendant, Tracy alleges, *inter alia,* that "DRI-BOTTOMS" diapers that are manufactured by Plaintiff Arquest and sold by Wal-Mart infringe the '824 patent. These allegations that Plaintiff Arquest's diapers infringe the '824 patent were made at least in "Tracy's Status Report (January 28, 2002)" and in "Tracy's Objections and Amended Answer to Wal-Mart's

Interrogatory No. 2," both of which were submitted by Defendant Tracy in the *Tracy v. Jewel Food Stores et al.*, No. 99-C-2736 litigation.

10. As a result of Defendant Tracy's allegations that Plaintiff Arquest's diapers infringe the '824 patent, Plaintiff Arquest has a real and reasonable apprehension of an infringement suit by Defendant Tracy. Accordingly, there is an actual, present, and substantial controversy between Plaintiff Arquest and Defendant Tracy.

COUNT I – PATENT INVALIDITY

11. Plaintiff Arquest repeats and realleges the statements and allegations in paragraphs 1-10 herein.

12. The claims of the '824 patent are invalid for failure to comply with the Patent Laws of the United States, Title 35 United States Code, § 100 *et seq.*, including 35 U.S.C. §§ 102, 103, and/or 112.

COUNT II – NON-INFRINGEMENT

13. Plaintiff Arquest repeats and realleges the statements and allegations of paragraphs 1-12 herein.

14. Plaintiff Arquest does not infringe any valid and enforceable claim of the '824 patent by the manufacture, use, sale, offer for sale, and/or importation of Arquest's diaper or training-pants products.

JURY TRIAL DEMAND

15. Plaintiff Arquest demands a trial by jury.

REQUEST FOR RELIEF

WHEREFORE, plaintiff Arquest prays for a final judgment as follows:

A. that this Court declare that United States Patent No. 5,797,824 is invalid;

B. that this Court declare that Plaintiff Arquest does not infringe any valid and enforceable claim of United States Patent No. 5,797,824;

C. that this Court declare that Defendant Tracy, her agents, employees, attorneys, and/or persons or other entities in active concert or participation with her are permanently enjoined from maintaining any action, suing or threatening to sue, or making any charge against Plaintiff Arquest or its licensees, suppliers, distributors, or customers concerning alleged infringement of United States Patent No. 5,797,824;

D. that this Court declare this case exceptional pursuant to 35 U.S.C. § 285 and award Plaintiff Arquest their costs, expenses, and disbursements in this action, including reasonable attorneys' fees; and

E. that this Court award Plaintiff Arquest such other relief as the Court may deem just and proper.

Respectfully submitted,

Dated: March 6, 2002

By: Margaret M. Duncan

Margaret M. Duncan
Keith M. Stolte
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SEE CASE FILE FOR EXHIBITS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Northern District of Illinois.

Plaintiff(s): **Arquest, Inc.**	**Defendant**(s):**Rhonda Tracy**
County of Residence: Calhoun County, Arkansas	County of Residence: DuPage County, Illinois
Plaintiff's Atty: Margaret M. Duncan McDermott Will & Emery 227 W. Monroe Street Chicago, IL 60606 312-372-2000	Defendant's Atty: Edward D. Manzo Cook, Alex, McFarron, Manzo, Cummings & Mehler, Ltd. 200 W. Adams Street Suite 2850 Chicago, IL 60606 312-236-8500

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal Parties
(Diversity Cases Only)
Plaintiff:- **N/A**
Defendant:- **N/A**

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IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **830 Patent**

VI.Cause of Action: **35 U.S.C. Sec. 101 et seq. & 28 U.S.C. Secs. 2201 & 2202. Declaratory judgment that U.S. Patent No. 5,797,824 is invalid and not infringed.**

VII. Requested in Complaint
Class Action:
Dollar Demand:
Jury Demand: **Yes**

VIII. This case **IS NOT** a refiling of a previously dismissed case.

Signature: Margaret M. Duncan

Date: 3/6/02

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, print this form, sign and date it and submit it with your new civil action. **Note: You may need to adjust the font size in your browser display to make the form print properly.** **Revised: 06/28/00**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In the Matter of

JUDGE MORAN

ARQUEST, INC.

Plaintiff,

v.

02C 1649

CIVIL ACTION NO.

RHONDA TRACY

MAGISTRATE JUDGE KEYS

Defendant.

DOCKETED
MAR 07 2002

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:
Plaintiff, ARQUEST, INC.

(A)		(B)	
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MEMBER OF TRIAL BAR?	YES ☒ NO ☐	MEMBER OF TRIAL BAR?	YES ☐ NO ☒
TRIAL ATTORNEY?	YES ☒ NO ☐	TRIAL ATTORNEY?	YES ☐ NO ☒
		DESIGNATED AS LOCAL COUNSEL?	YES ☒ NO ☐
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MEMBER OF TRIAL BAR?	YES ☐ NO ☐	MEMBER OF TRIAL BAR?	YES ☐ NO ☐
TRIAL ATTORNEY?	YES ☐ NO ☐	TRIAL ATTORNEY?	YES ☐ NO ☐
DESIGNATED AS LOCAL COUNSEL?	YES ☐ NO ☐	DESIGNATED AS LOCAL COUNSEL?	YES ☐ NO ☐

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U.S. DISTRICT COURT

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