

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KIMBERLY-CLARK WORLDWIDE, INC.,)	
AND KIMBERLY-CLARK GLOBAL)	
SALES, LLC,)	
)	
Plaintiffs,)	C.A. No.
)	
v.)	JURY TRIAL DEMANDED
)	
CARDINAL HEALTH, INC. AND)	
CARDINAL HEALTH 200, LLC,)	
)	
Defendants.)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, Kimberly-Clark Worldwide, Inc. and Kimberly-Clark Global Sales, LLC (collectively, “K-C” or “Plaintiffs”), for their Complaint against Defendants, Cardinal Health, Inc. and Cardinal Health 200, LLC (collectively, “Cardinal” or “Defendants”), hereby demand a jury trial and allege as follows:

THE PARTIES

1. Kimberly-Clark Worldwide, Inc. and Kimberly-Clark Global Sales, LLC are corporations organized and existing under the laws of the State of Delaware.

2. Upon information and belief, Cardinal Health 200, LLC is a limited liability company organized and existing under the laws of the State of Delaware. Cardinal Health 200, LLC has appointed The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801, as its agent for service of process.

3. Upon information and belief, Cardinal Health, Inc. is a corporation organized and existing under the laws of the State of Ohio. Cardinal Health, Inc. has appointed CT Corporation System, 1300 East Ninth Street, Cleveland, Ohio 44114, as its agent for service of process.

4. Upon information and belief, Cardinal Health 200, LLC is a wholly-owned subsidiary of Cardinal Health, Inc.

JURISDICTION AND VENUE

5. This action is for patent infringement under the patent laws of the United States, 35 U.S.C. §1 *et seq.*

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

7. Upon information and belief, this Court has personal jurisdiction over Defendants at least because Cardinal Health 200, LLC is incorporated in and a resident of Delaware, one or both Defendants have done and are doing business in Delaware, one or both Defendants offer for sale, sell, distribute, and ship products into Delaware, and/or one or both Defendants sell infringing products at issue in this case with the expectation that they will be purchased by customers in Delaware.

8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b). Upon information and belief, Defendants are doing business in Delaware and wrongful acts committed by Defendants have occurred in and are causing injury to K-C in this judicial district.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,635,134

9. On June 3, 1997, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,635,134 (“the ‘134 patent”). Kimberly-Clark Worldwide, Inc. is the owner and assignee of the ‘134 patent. Kimberly-Clark Global Sales, LLC is licensed under the ‘134 patent. A copy of the ‘134 patent is attached as Exhibit A.

10. Defendants have directly infringed and continue to directly infringe claims of the ‘134 patent under 35 U.S.C. § 271(a) by using sterilization wraps marketed under the name “DuraBlue” (the “DuraBlue products”) to practice the claimed methods of the ‘134 patent.

11. Defendants have indirectly infringed and continue to indirectly infringe claims of the ‘134 patent under 35 U.S.C. § 271(b). Defendants have had actual knowledge of the ‘134 patent since at least the lawsuit K-C filed against Cardinal in 2004, Civil Action No. 04-C-0012 in the U.S. District Court for the Eastern District of Wisconsin. Defendants have knowingly and intentionally induced infringement of the claims of the ‘134 patent through the sale and/or offer for sale of the DuraBlue products. The direct infringers being induced by Defendants include at least the end-users of the DuraBlue products.

12. Defendants’ acts of inducement include selling the DuraBlue products to their customers with the intent that the products be used in an infringing manner; encouraging their customers to use the DuraBlue products in an infringing manner; providing instructions to their customers to use the DuraBlue products in an infringing manner; and/or advertising, marketing, and promoting the use of the DuraBlue products in an infringing manner.

13. Defendants have indirectly infringed and continue to indirectly infringe claims of the ‘134 patent under 35 U.S.C. § 271(c) through the sale and offer for sale of the DuraBlue products, which constitute a material part of the patented invention of claims of the ‘134 patent and are not a staple article of commerce suitable for non-infringing uses. Defendants know the DuraBlue products are especially made or adapted for use in an infringement of claims of the ‘134 patent and the products are not a staple article of commerce suitable for non-infringing uses. The direct infringers for Defendants’ contributory infringement under 35 U.S.C. § 271(c) include the end-users of the DuraBlue products.

14. Defendants sell and offer to sell the DuraBlue products to their customers. Defendants have contributed and continue to contribute to their customers' infringement by selling and offering to sell the DuraBlue products. Moreover, Defendants have advertised and promoted the DuraBlue products as a material component of the patented invention, and encouraged and provided instructions to their customers for using the DuraBlue products as a material component of the patented invention.

15. Upon information and belief, Defendants' infringement of the '134 patent has been, and continues to be, willful at least because Defendants had actual knowledge of the '134 patent since at least the lawsuit K-C filed against Cardinal in 2004, Civil Action No. 04-C-0012 in the U.S. District Court for the Eastern District of Wisconsin.

16. Upon information and belief, this is an exceptional case at least because of Defendants' willful infringement.

17. Defendants' acts of infringement have been without express or implied license by K-C, are in violation of K-C's rights, and will continue unless enjoined by this Court.

18. K-C has been damaged by Defendants' infringement.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 5,958,337

19. On September 28, 1999, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,958,337 ("the '337 patent"). Kimberly-Clark Worldwide, Inc. is the owner and assignee of the '337 patent. Kimberly-Clark Global Sales, LLC is licensed under the '337 patent. A copy of the '337 patent is attached as Exhibit B.

20. Defendants have directly infringed and continue to directly infringe claims of the '337 patent under 35 U.S.C. § 271(a) by making, using, offering to sell, selling, and/or importing into the United States the DuraBlue products.

21. Defendants have indirectly infringed and continue to indirectly infringe claims of the '337 patent under 35 U.S.C. § 271(b). Defendants have had actual knowledge of the '337 patent since at least the lawsuit K-C filed against Cardinal in 2004, Civil Action No. 04-C-0012 in the U.S. District Court for the Eastern District of Wisconsin. Defendants have knowingly and intentionally induced infringement of the claims of the '337 patent through the sale and offer for sale of the DuraBlue products. The direct infringers being induced by Defendants include the end-users of the DuraBlue products.

22. Defendants' acts of inducement include selling the DuraBlue products to their customers with the intent that the products be used in an infringing manner; encouraging their customers to use the DuraBlue products in an infringing manner; providing instructions to their customers to use the DuraBlue products in an infringing manner; and advertising, marketing, and promoting the use of the DuraBlue products in an infringing manner.

23. Defendants have indirectly infringed and continue to indirectly infringe claims of the '337 patent under 35 U.S.C. § 271(c) through the sale and offer for sale of the DuraBlue products, which constitute a material part of the patented invention of claims of the '337 patent and are not a staple article of commerce suitable for non-infringing uses. Defendants know the DuraBlue products are especially made or adapted for use in an infringement of claims of the '337 patent and the products are not a staple article of commerce suitable for non-infringing uses. The direct infringers for Defendants' contributory infringement under 35 U.S.C. § 271(c) include the end-users of the DuraBlue products.

24. Defendants sell and offer to sell the DuraBlue products to their customers. Defendants have contributed and continue to contribute to their customers' infringement by selling and offering to sell the DuraBlue products. Moreover, Defendants have advertised and

promoted the DuraBlue products as a material component of the patented invention, and encouraged and provided instructions to their customers for using the DuraBlue products as a material component of the patented invention.

25. Upon information and belief, Defendants' infringement of the '337 patent has been, and continues to be, willful at least because Defendants had actual knowledge of the '337 patent since at least the lawsuit K-C filed against Cardinal in 2004, Civil Action No. 04-C-0012 in the U.S. District Court for the Eastern District of Wisconsin.

26. Upon information and belief, this is an exceptional case at least because of Defendants' willful infringement.

27. Defendants' acts of infringement have been without express or implied license by K-C, are in violation of K-C's rights, and will continue unless enjoined by this Court.

28. K-C has been damaged by Defendants' infringement.

JURY DEMAND

29. Trial by Jury is hereby demanded.

RELIEF SOUGHT

WHEREFORE, K-C prays:

A. For injunctive relief against further infringement of the '134 patent and the '337 patent by Defendants, their officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with any one or more of them;

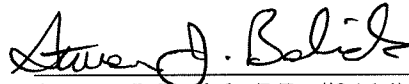
B. For damages to compensate K-C for the infringement of the '134 patent and the '337 patent, and that such damages be trebled under 35 U.S.C. § 284, together with pre-judgment and post-judgment interest;

C. For an assessment of costs against Defendants;

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

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

ASHBY & GEDDES



Steven J. Balick (I.D. #2114)
Lauren E. Maguire (I.D. #4261)
Andrew C. Mayo (I.D. #5207)
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, DE 19899
302-654-1888
sbalick@ashby-geddes.com
lmaguire@ashby-geddes.com
amayo@ashby-geddes.com

Attorneys for Plaintiffs

Of Counsel:

Mark S. Cooperman
Thomas K. Pratt
Michael J. Harris
Victoria R.M. Webb
BANNER & WITCOFF, LTD.
10 South Wacker Drive, Suite 3000
Chicago, IL 60606
312-463-5000
mcooperman@bannerwitcoff.com
tpratt@bannerwitcoff.com
mharris@bannerwitcoff.com
vwebb@bannerwitcoff.com

Dated: December 14, 2011