

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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**PANTIES PLUS, INC.,**  
Petitioner,

v.

**BRAGEL INTERNATIONAL, INC.,**  
Patent Owner

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Case No. **IPR2017-00044**  
Patent No. **7,144,296 B2**

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**DECLARATION OF DAVID CHEN IN SUPPORT OF PATENT OWNER'S  
PRELIMINARY RESPONSE**

I, David Chen, hereby declare the following under penalty of perjury:

1. I am Business Director of Bragel International, Inc. (“Bragel”). I make this declaration based on personal knowledge and could competently testify to the statements contained herein.

2. Bragel is a relatively small, family-owned business started by my sister, Alice Chang (née Chen), her ex-husband, Jasper Chang, and my brother Kenny Chen in 1989. When Bragel was initially formed, Alice Chang, Jasper Chang, and Kenny Chen were the owners and directors of the company. I am now also a part owner of the company. I became the President of Bragel in 2005, and have been the Business Director of Bragel since 2015.

3. I became an employee of Bragel in 1997. The scope of my employment at Bragel included design and development of intimate apparel. Based on my experience, I have knowledge of the products sold by Bragel.

4. In 2002, Bragel designed and developed a novel breast form system that includes a strapless, backless, self-adhesive breast form system with a connector. This invention was the subject of a patent application filed in May 2002, which led to the issuance of U.S. Patent No. 7,144,296 (the “’296 Patent”), titled “Attachable Breast Form Enhancement System.” I am one of the named inventors of this patent.

5. In late 2001, Jasper, Alice, and I had a brainstorming session regarding potential new Bragel products. Alice came up with the idea of using a connector to adjoin two silicone breast forms to create cleavage and proposed this idea to the group. Initially, we had no idea how to get a connector to work with a breast form. Eventually, through extensive experimentation, I provided the definite and complete idea of a connector positioned between inner sides of each of the breast forms. Jasper provided input on the adhesive, some final touches on the type of breast forms that would work in the system and their design, and made the CNC mold to make prototypes. Alice provided ongoing input on the operability of prototype systems.

6. Combining a breast form film and a connector proved to be a very difficult task. The breast form includes a volume of silicone gel encased by an extremely thin thermoplastic film. This film is thinner than a human hair. Providing a connector to this thin film without ripping or tearing it, and while still providing a holding force strong enough to provide the advantage of breast cleavage and push-up enhancement required numerous attempts and experimentation.

7. In the '296 Patent, we described what are called "connector patches," which are subassemblies that facilitate the attachment of the connectors to the breast forms. As an example in the patent, we disclosed that "if the subassembly is

made of a thermoplastic film, then it can be heat sealed to the interior or exterior surface of the breast form, or the connector patch can have a permanently grown adhesive that allows the subassembly to be removably attached to the breast form.” Bragel sells strapless, backless breast forms covered by the ’296 Patent, including a line of U.S. manufactured products sold under the trademark “Nubra.” In practice, the NuBra uses a small tailfin-shaped “connector patch” of this type to attach the connector to the breast forms. Based on my review of the infringing products distributed by Petitioner Panties Plus, Inc. (“PPI”) and sold by Charlotte Russe, Inc. and Styles for Less, Inc., it appears that PPI’s products directly copy this “connector patch” including the shape of the connector patch used in Bragel’s commercial Nubra product.

8. As an employee of Bragel, any inventions I created, including the “Breast Form Encased with Fabric Laminated Thermoplastic Film” described in U.S. Patent No. 6,857,932; the “Attachable Breast Form Enhancement System” described in U.S. Patent Nos. 6,758,720 and 6,852,001; and the ’296 Patent, were under an obligation of assignment to Bragel. This same obligation of assignment extended to Alice and Jasper.

9. The obligation to assign these inventions to Bragel was typically memorialized by a formal assignment at some point in time after a related patent application was filed.

10. Bragel's NuBra products have enjoyed tremendous popularity due to the patented benefits of providing the wearer with volume and cleavage in a strapless and backless breast form. The "Nubra" products have from almost the beginning received substantial industry acclaim and experienced strong commercial success, both in the United States and abroad.

11. Advertising for the Nubra touts the features of the Nubra that are discussed in the '296 Patent, such as providing "cleavage control and enhancement you need with its patented center clasp." This is typical of our advertising of the Nubra, which often also features the backless, strapless nature of the product, the use of silicone gel, and the natural look and feel of the Nubra.

12. The Nubra products have also been the subject of numerous knockoffs which have flooded into the market. Bragel has had to continually litigate and enforce its patent rights to stem the tide of these cheap knockoffs flowing out of Asia. Bragel has been involved in continuous efforts to enforce its patent rights against companies selling infringing and knockoff products, and has been involved in over 20 cases since U.S. Patent No. 6,758,720 issued.

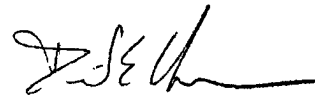
13. In further response to these knockoffs, Bragel was forced to outsource most of its manufacturing to China to manufacture a line of products sold under the "D'Eva" mark to try to compete with these low-priced knockoffs. The Nubra and

D'Eva products are referred to collectively as the Bragel Products herein. Bragel manufactures the Bragel Products covered by the '296 Patent and does not license the '296 Patent to others.

14. Bragel's domestic and international sales in 2000 were about \$7 million, in 2001 were about \$5 million, and in 2002 were about \$2.8 million. During this time, Bragel sold breast enhancers and prostheses, similar to those described in U.S. Patent No. 6,857,932 and in other Bragel patents, including U.S. Patent No. 5693164, filed in 1996.

15. In 2003, Bragel's sales jumped to \$18.4 million in products in domestic and international sales. Of these \$18.4 million in sales, \$16 million is for the Nubra product covered by the '296 Patent. Within 15 months of launching the NuBra product, sales of NuBra alone were over \$17,000,000.

Dated: January 12, 2017



David Chen

(Location)

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