

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action Number: 1:21-cv-2112

SMITH SPORT OPTICS, INC., a Delaware company,
and KOROYD SARL, a Monaco company,

Plaintiffs,

vs.

THE BURTON CORPORATION, a Vermont company,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, Smith Sport Optics, Inc. (“Smith”) and Koroyd SARL (“Koroyd”) (collectively, “Plaintiffs”), by and through their attorneys, Dorsey & Whitney, LLP, for their complaint against Defendant The Burton Corporation (“Burton” or “Defendant”), allege the following:

NATURE OF THE ACTION AND SUMMARY OF RELIEF SOUGHT

1. On August 11, 2020, the United States Patent and Trademark Office (“USPTO”) awarded U.S. Patent No. 10,736,373 entitled “Helmet with Shock Absorbing Inserts” (“the ’373 patent”) to Plaintiffs Smith and Koroyd, who are co-owners of the ’373 patent by virtue of assignments from the named co-inventors. A copy of the ’373 patent is attached as Exhibit A.

2. The ’373 patent covers inventions produced from a collaboration between the Plaintiffs undertaken with the goal of creating better, safer helmets for skiing and snowboarding, and for biking.

3. Plaintiffs filed the patent application that ultimately matured into the '373 patent on August 13, 2013, and that same year Smith began selling helmets based on the covered technology under the "Smith" brand in the United States. These Smith-brand helmets were groundbreaking in the snow sports and biking industries. They received numerous prestigious awards, garnered wide acclaim, became a commercial success, and remain a commercial success to this day.

4. With full knowledge of Plaintiffs' '373 patent and Plaintiffs' analysis demonstrating Defendant's likely infringement, Defendant began selling ski and snowboard helmets under its Anon[®] brand incorporating Plaintiffs' patented technology in direct competition with the patented Smith-Koroyd[®] helmets and over Plaintiffs' objections.

5. Instead of respecting Plaintiffs' patent rights, Defendant proceeded to capitalize on Plaintiffs' hard-earned advancements and sell the infringing Anon helmets without a license. Defendant's unauthorized actions are irreparably harming Plaintiffs by undercutting their position in the market, undermining their reputation as the innovators of this technology, and denying Plaintiffs the exclusivity to which they are entitled under the Patent Act.

6. Plaintiffs filed this Complaint to preliminarily and permanently enjoin Defendant's blatant and willful patent infringement pursuant to the Patent Act, 35 U.S.C. §§ 271, 283-285, and to recover all damages and monetary relief warranted by Defendant's acts of infringement.

PARTIES

7. Smith is a Delaware company with headquarters in Portland, Oregon. The company's beginnings can be traced back to Idaho in 1965, when Dr. Bob Smith began selling his hand-built, anti-fogging, double-lens ski goggles out of his van on weekend trips to Utah and Colorado. Dr. Smith was driven to improve the ski industry through innovation. For example, in 1979, he

introduced the first goggle with an active ventilation system. Dr. Smith subsequently founded Smith to carry forward his drive to innovate, and, in 2006, Smith entered the helmet market and took goggle-helmet integration to a new level by introducing helmets with ventilation systems using channels and vents to enhance ventilation of goggles worn with the helmets. Smith later began its collaboration with Koroyd that resulted in the inventions covered by the '373 patent.

8. Koroyd is a Monaco company with a place of business in Monaco. It was established in 2010 and designs and engineers advanced impact protection technology that reduces the risk of suffering life-affecting injury. Koroyd's flagship product, which is referred to as Koroyd[®], manages energy generated during an impact through the sacrificial, plastic deformation of engineered geometries. Koroyd partners with companies in a diverse range of markets to implement its technology in products ranging from in-vehicle child seats to ski and snowboard helmets. Smith-brand ski and snowboard helmets incorporating Koroyd[®] technology are among the highest grossing ski and snowboard helmets in North America.

9. Defendant is a Vermont company having a place of business in Burlington, Vermont. Defendant sells snowboards and related products, including snowboard tools, snowboard equipment, clothing, jackets and outerwear, accessories, bags, protective gear, goggles, goggle lenses, and helmets. Defendant sells ski and snowboard helmets under the Anon[®] brand.

10. Defendant makes, uses, offers for sale, and/or sells within the United States, and imports into the United States, ski and snowboard helmets that incorporate Plaintiffs' patented technology in direct competition with Smith.

JURISDICTION AND VENUE

11. This is an action for patent infringement under the United States Patent Act, specifically 35 U.S.C. § 271. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1331 and 1338(a).

12. This Court has personal jurisdiction over the Defendant because, on information and belief, it has committed acts of infringement within this Judicial District by selling infringing Anon helmets in Colorado.

13. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400 because the Defendant has engaged, and continue to engage, in infringing activity in this Judicial District, and has regular and established places of business at the Denver Burton Flagship Store at 2649 Walnut Street, Denver, Colorado 80205 and Boulder Burton Flagship Store at 1048 Pearl Street #113, Boulder, Colorado 80302.

FACTUAL BACKGROUND

14. Plaintiffs' collaboration produced inventive helmets for skiing and snowboarding and for biking that provided a new level of impact protection in a lightweight and well-ventilated form.

15. On August 13, 2013, Plaintiffs filed U.S. Patent Application No. 13/965,703, which later matured into the '373 patent, covering the collaboration inventions—vented helmets requiring, among other things, a shell, a shock absorbing liner, one or more cavities, and one or more shock absorbing inserts having certain array structures, such as Koroyd[®] technology, positioned in or within one or more cavities.

16. Smith later introduced the revolutionary “Vantage” ski and snowboard helmet and the “Forefront” bike helmet incorporating the now-patented inventions. The below picture is of the

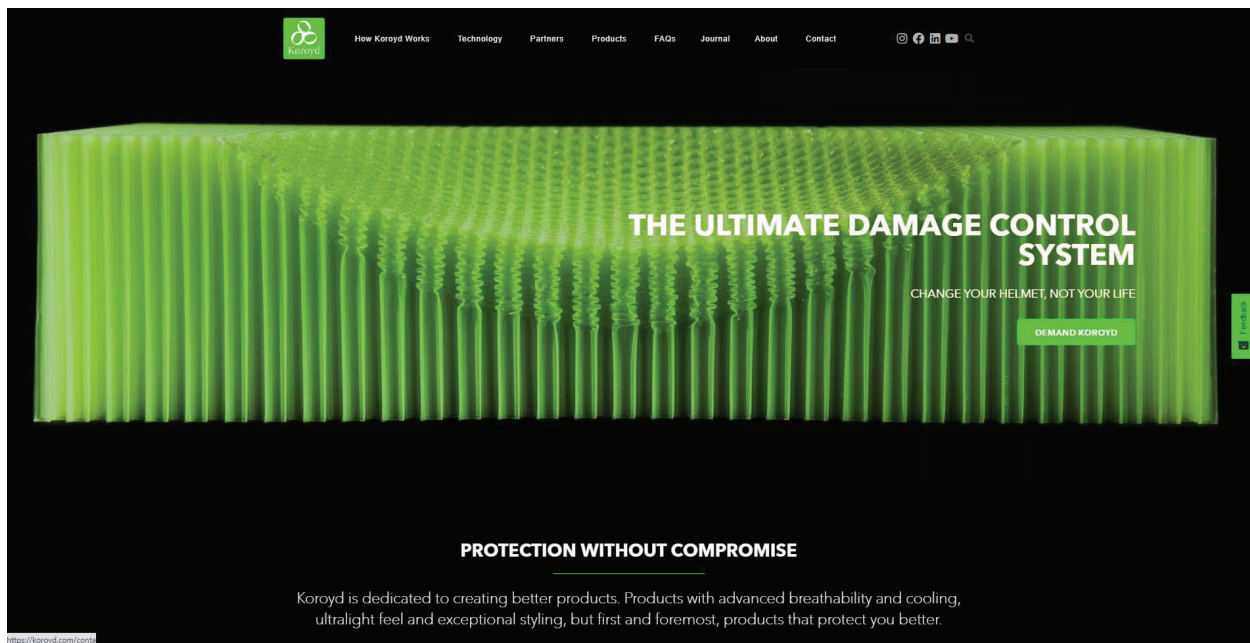
Vantage, showing Koroyd® open cell array structures in Koroyd®'s signature green color visible through vents in the shell:

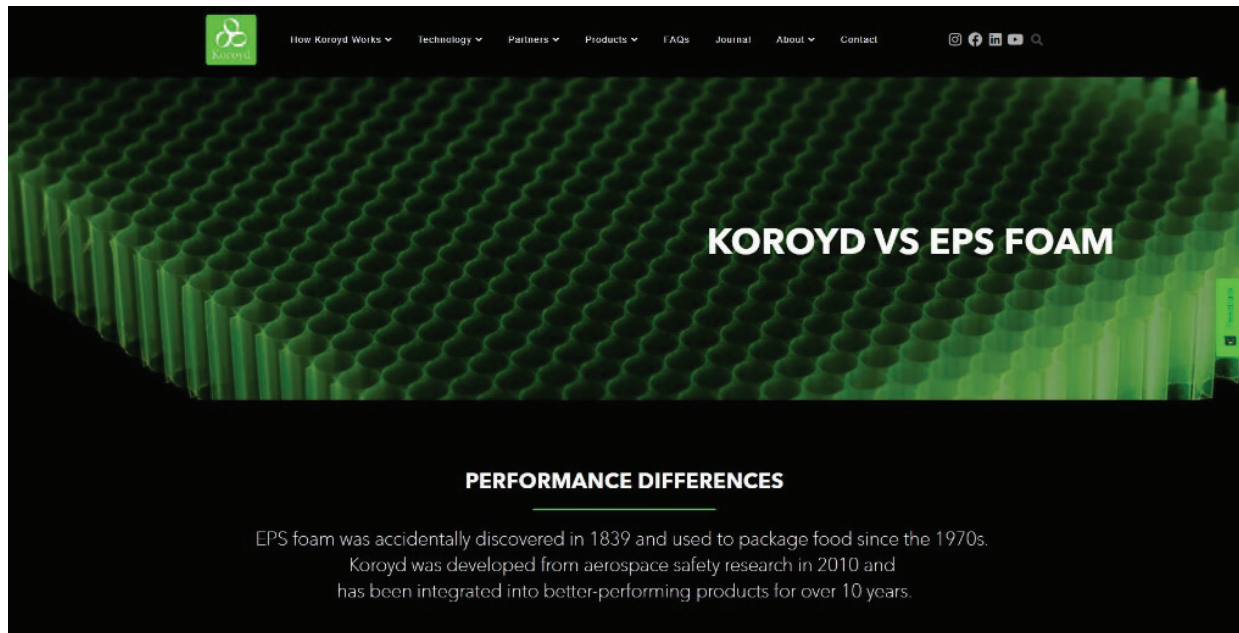


17. The below picture is of the Forefront, likewise showing Koroyd® open cell array structures in Koroyd®'s signature green color visible through vents in the shell:



18. Below are images of the Koroyd material, the first showing what we call the “crumple zone” effect.





19. The launch of Vantage and Forefront helmets marked a paradigm shift in the ski and snowboard helmet and bike helmet industries, which had not seen a significant impact material innovation in over two decades. Both helmets garnered critical acclaim.

20. In view of the commercial success of the Vantage and Forefront, Plaintiffs invested significant additional resources over the years to develop additional Smith-brand snow helmets incorporating Koroyd[®], including the Quantum, Mission, Mirage, Level, Liberty, Survey, Survey Jr., and Prospect Jr. helmets.

21. These Smith-Koroyd[®] helmets have been a great commercial success, which success is now being threatened by Defendant's infringement.

22. On December 29, 2020, Koroyd learned that Defendant, a direct competitor to Smith in the ski and snowboard market, was about to start selling helmets in the United States using what they call WaveCel[®] technology under the product names Merak and Logan and under Defendant's Anon[®] brand. WaveCel[®] is produced by a company named WaveCel based in Oregon.

23. On January 8, 2021, counsel for Koroyd sent a letter by email to Defendant's Chief Legal Officer, Sonya Sibold, identifying the '373 patent, explaining in great detail (with over 200 pages of exhibits) that selling the Anon[®] Merak and Logan helmets in the United States would infringe the '373 patent, and requesting that Defendant halt its unlicensed launch of the products.

24. Despite this notice, and before providing any substantive response to Koroyd's demand letter, Defendant started selling the Anon Merak and Logan helmets ("the Anon WaveCel[®] helmets") in the United States in January 2021 over Koroyd's objections and with full knowledge of the '373 patent. After additional subsequent correspondence between Koroyd's counsel and counsel for Defendant, Defendant has refused to stop its infringing activities.

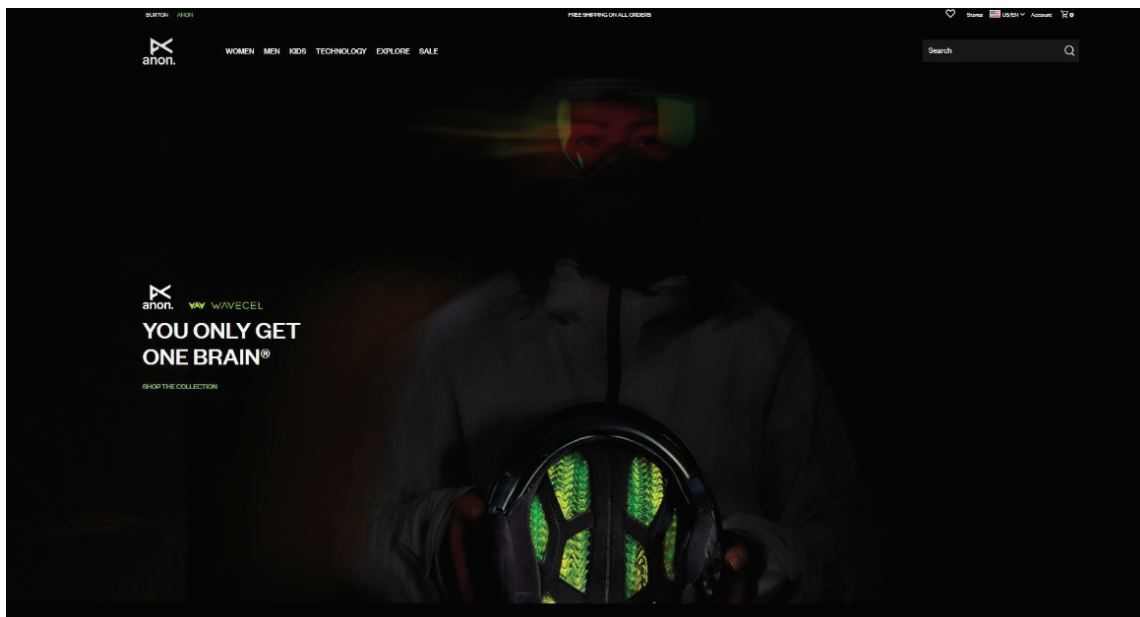
25. On information and belief, WaveCel[®] was developed specifically to compete with Koroyd[®] and marketed so as to draft off of Plaintiffs' years of combined efforts in blazing a path of innovation in the helmet industry.

26. On information and belief, Defendant launched the Anon WaveCel[®] helmets in a manner calculated to capitalize on and appropriate Plaintiffs' goodwill and innovative reputation by co-opting the aesthetic scheme that Plaintiffs had been using in marketing Smith-Koroyd[®] helmets—depicting black helmets with cell array structures visible through the helmet's vents in Koroyd[®]'s signature green color and black backgrounds.

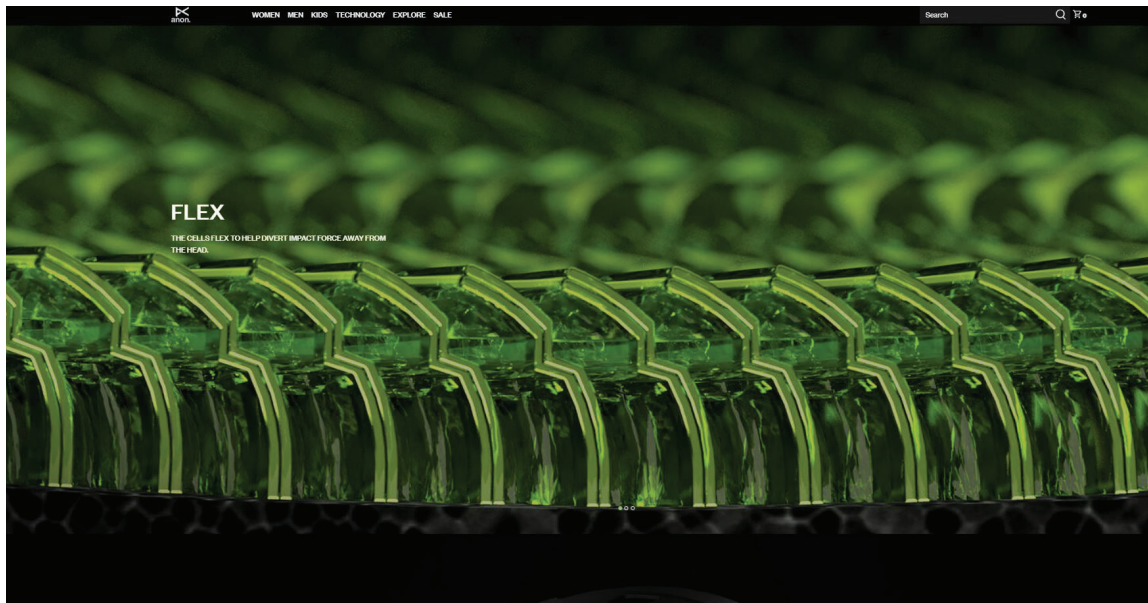
27. Below is an image from the wavecel.com website as archived on web.archive.org, with a picture of the Merak helmet next to the words "Introducing," "anon," and "WAVECEL." Green WaveCel[®] material is visible through vents in the black helmet as depicted over a black background.



28. Below is an image from Defendant's marketing material showing green WaveCel® material inside a black helmet against a black background.



29. Below is an image from Defendant's marketing material showing green WaveCel® material against a black background.



30. Below are images from Defendant's marketing material showing the Anon WaveCel[®] helmets with green WaveCel[®] showing brightly through the vents of the respective black helmets against a black background.

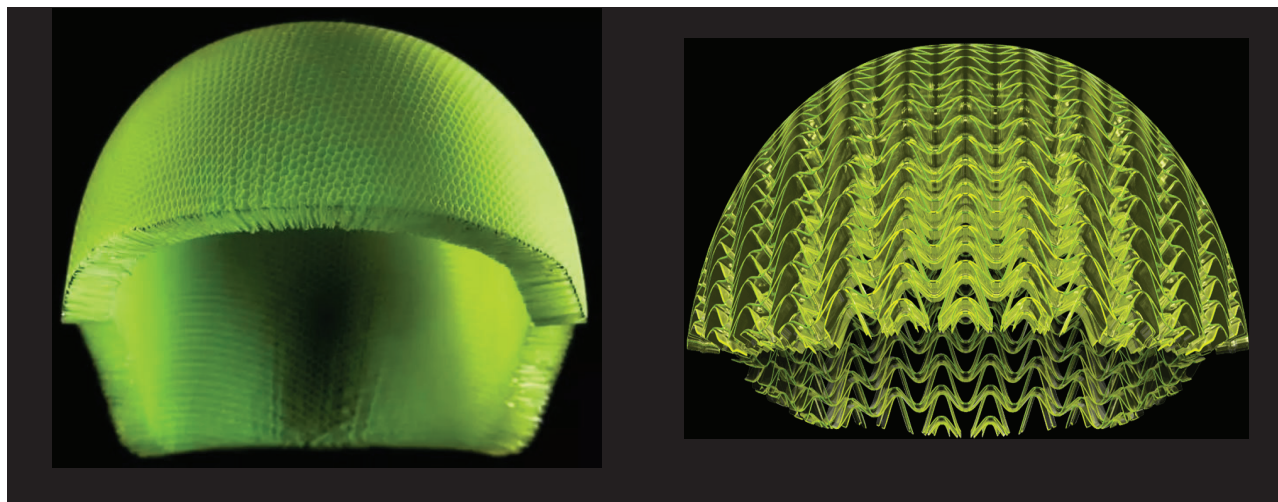


31. For comparison purposes, below is an image used by Smith in marketing the Smith Vantage Koroyd[®] helmet (left) side-by-side with an image used by Defendant in marketing the

Anon Merak WaveCel® helmet (right). Green Koroyd® and green WaveCel® material is visible through the vents of the respective black helmets.



32. Below is an image of a dome-shaped cell array used by Koroyd in marketing Koroyd® (left) side-by-side with an image of a dome-shaped cell array used by WaveCel in marketing WaveCel® (right).



33. On information and belief, Defendant also co-opted Plaintiffs “crumple zone” description for Koroyd®’s force absorption properties and has used it to describe the Anon WaveCel® helmets intending to appropriate the good will associated with Koroyd® helmets.

34. On information and belief, Defendants used the same animation agency that Smith used for Koroyd® helmet ads to make animations for Anon WaveCel® helmets with a similar look and feel as Smith’s ads, and chose to use the same factory that Smith used to manufacture Koroyd® helmets to manufacture Anon WaveCel® helmets and thus benefit from the manufacturing know-how that Plaintiffs developed through their own hard work.

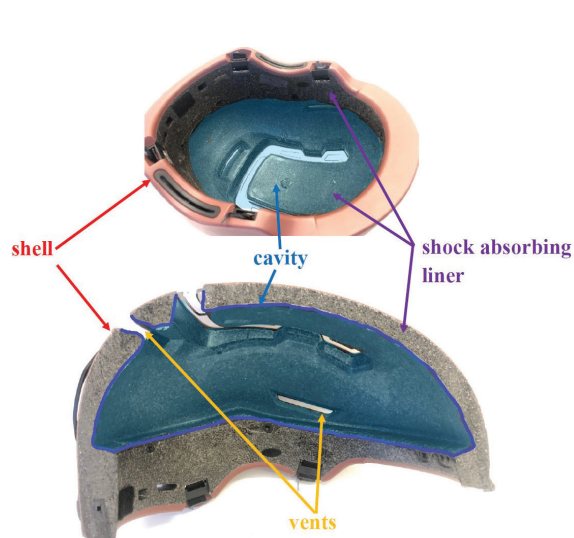
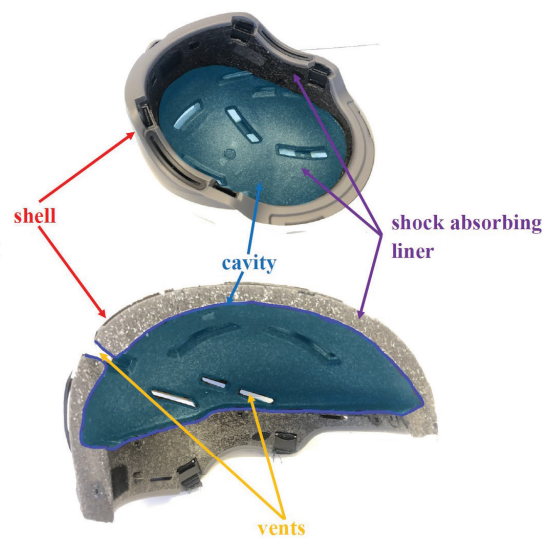
35. Defendant’s introduction of the Anon WaveCel® helmets in direct competition against Smith and in violation of the ’373 patent, coupled with Defendant’s blatant co-opting of Koroyd®’s signature green color, Plaintiffs’ marketing aesthetics, and Plaintiffs’ “crumple zone” descriptions is creating confusion in the marketplace by blurring the lines between Koroyd® helmets and WaveCel® helmets and is causing Plaintiffs’ irreparable harm in terms of loss of market share, undermining Plaintiffs’ reputations as leading innovators in impact protection for helmets, lost business opportunities and otherwise undercutting Plaintiffs’ market position and commercial prospects.

36. The infringing Anon® Merak and Logan helmets satisfy every limitation of at least claims 1-3 and 7 of the ’373 patent and, therefore, infringe Plaintiffs’ patent rights.

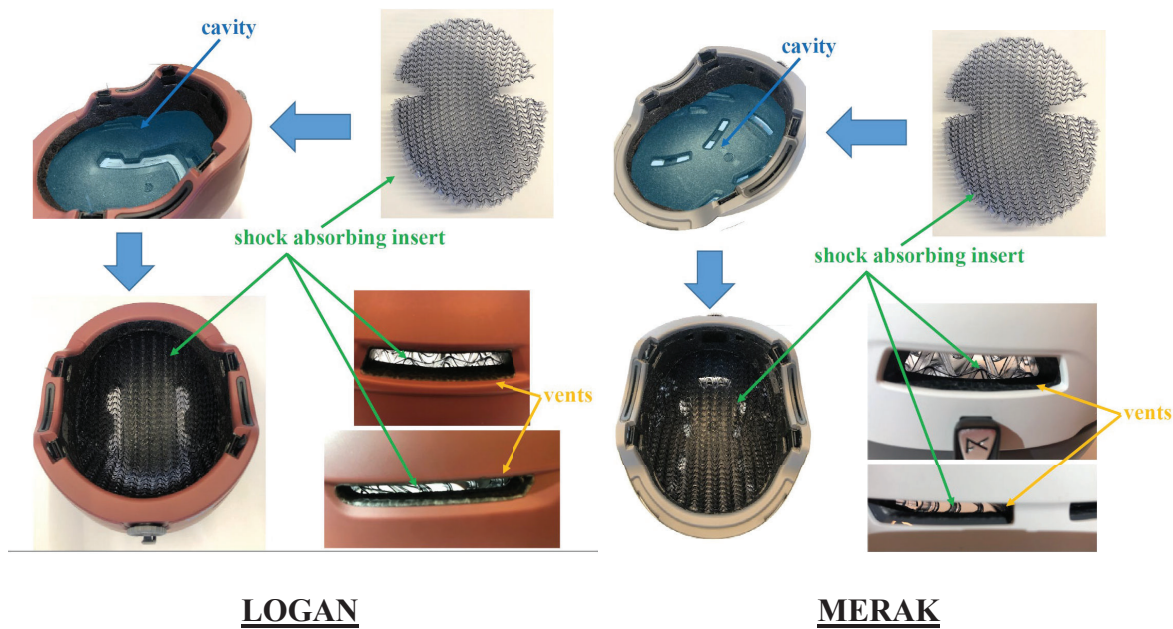
37. The Anon® Merak and Logan helmets have a shell comprising a plurality of vents including a first vent defining a first opening and a second vent defining a second opening.

LOGANMERAK

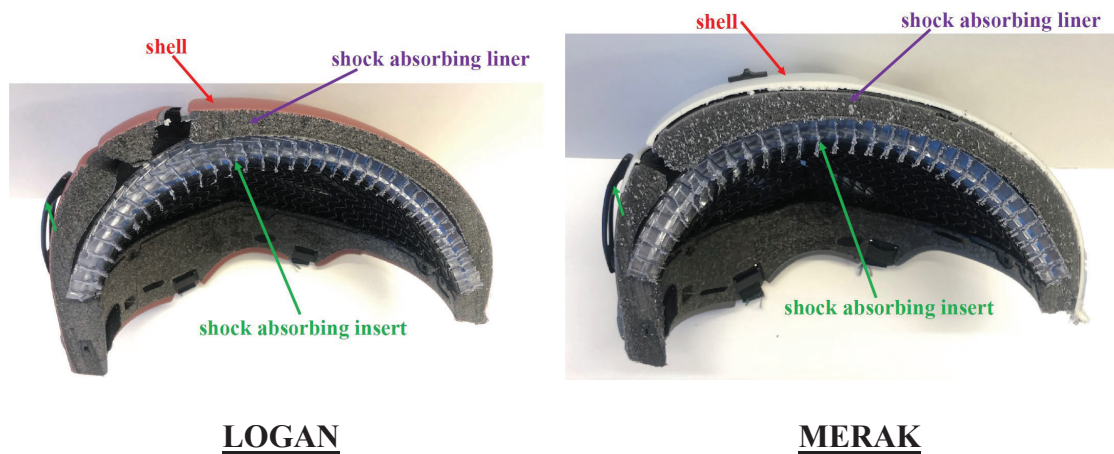
38. The Anon[®] Merak and Logan helmets have a shock absorbing liner adjacent to and attached to the shell and comprising a cavity at least partially aligned with the plurality of vents.

LOGANMERAK

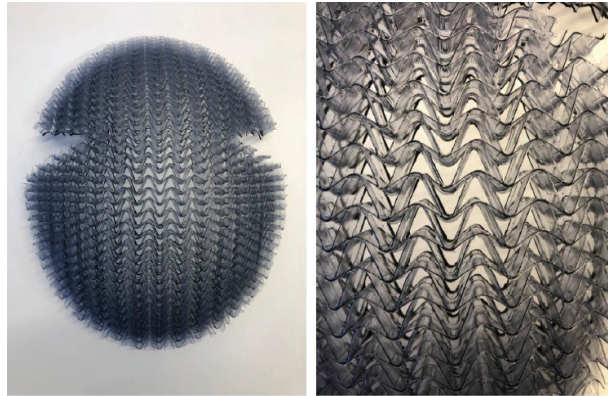
39. The Anon[®] Merak and Logan helmets have a shock absorbing insert positioned in and substantially filling the cavity such that the shock absorbing insert is visible through and spans across at least a portion of each of the plurality of vents.



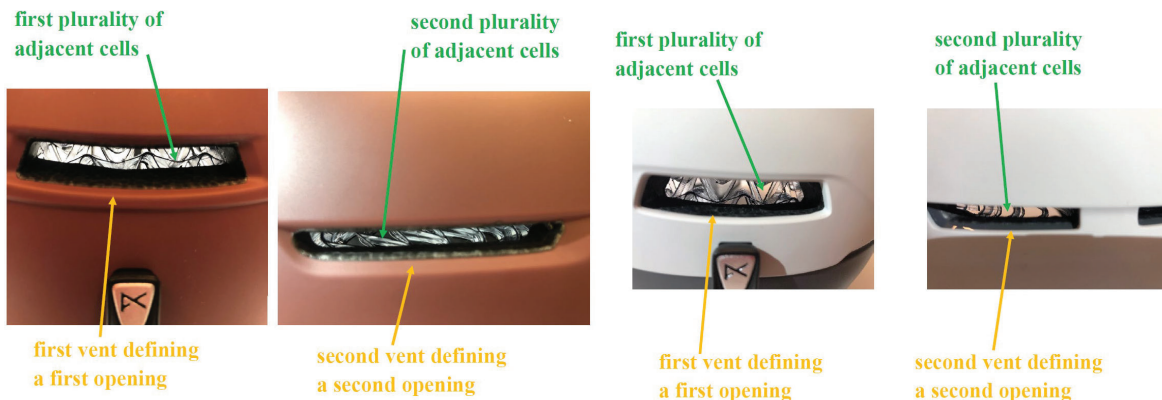
40. In the Anon[®] Merak and Logan helmets, at least a portion of the shock absorbing liner is positioned between the shell and the shock absorbing insert.



41. In the Anon[®] Merak and Logan helmets, the shock absorbing insert comprises an array of energy absorbing cells, each having respective open first longitudinal ends and open second longitudinal ends.



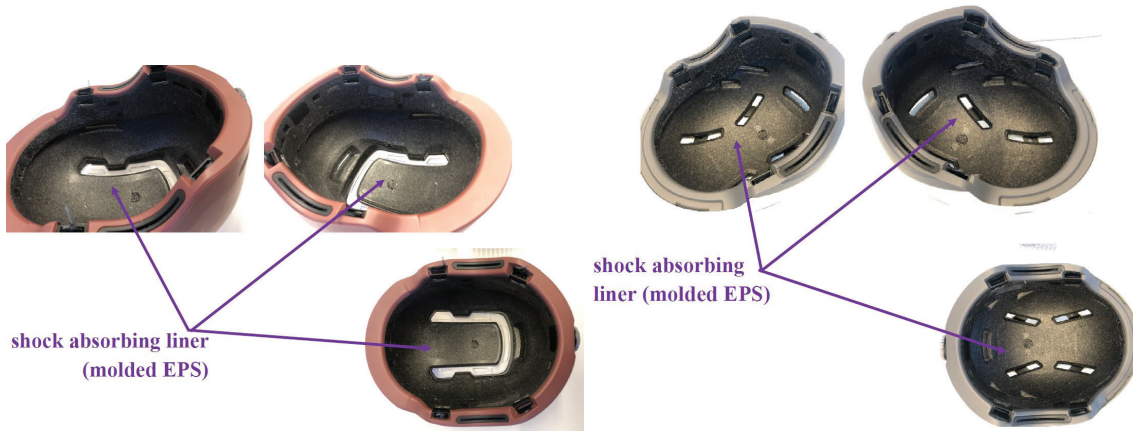
42. In the Anon[®] Merak and Logan helmets, the first longitudinal ends of a first plurality of adjacent cells of the array of energy absorbing cells are positioned within a perimeter of the first opening and the first longitudinal ends of a second plurality of adjacent cells of the array of energy absorbing cells are positioned within a perimeter of the second opening such that air is able to flow from an exterior side of the helmet through each of the first and second vents and through a respective one of the first and second plurality of adjacent cells toward an interior of the helmet.



LOGAN

MERAK

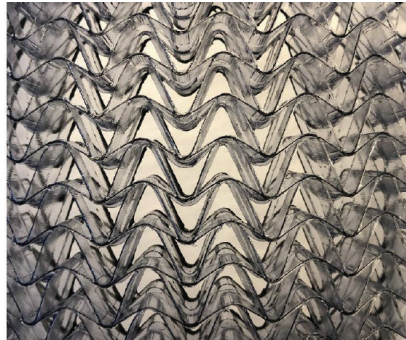
43. In the Anon[®] Merak and Logan helmets, the shock absorbing liner is seamless.



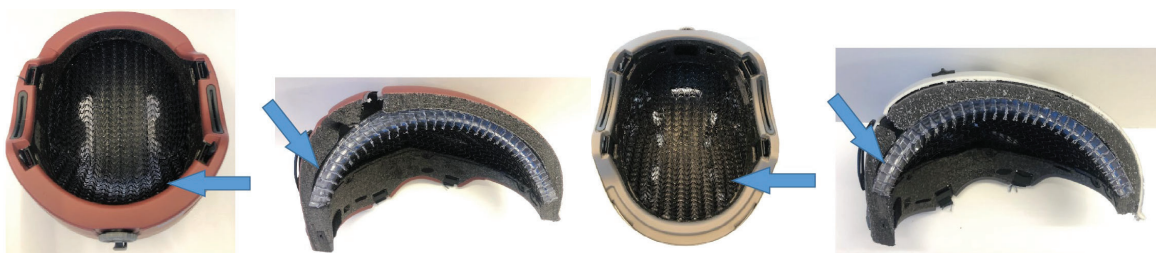
LOGAN

MERAK

44. In the Anon[®] Merak and Logan helmets, the array of energy absorbing cells of the shock absorbing insert comprises an array of tubes.



45. In the Anon[®] Merak and Logan helmets, the shock absorbing insert extends to a portion of the helmet configured to be positioned at a back of a wearer's head.



LOGAN

MERAK

COUNT I - PATENT INFRINGEMENT (35 U.S.C. § 271)

46. Plaintiffs hereby incorporate all preceding paragraphs in support of Count I by this reference.

47. On information and belief, Defendant imports the Anon[®] Merak and Logan helmets from China where they are manufactured.

48. Because the Anon[®] Merak and Logan helmets satisfy each and every element of at least claims 1-3 and 7 of the '373 patent, Defendant's acts of making, using, offering to sell, selling, and/or importing the helmets in the United States constitute acts of direct infringement under 35 U.S.C. § 271.

49. Defendant also indirectly infringe at least claim 1 of the '373 patent under 35 U.S.C. § 271 at least by inducing users to use the helmets in the United States after purchase.

50. Given Defendant's actual notice of the '373 patent and Plaintiffs' allegations of infringement, Defendant's infringing activity has and continues to demonstrate a deliberate and conscious decision to infringe the '373 patent, or at the very least a reckless disregard of Plaintiffs' patent rights and therefore constitutes willful infringement.

51. Defendant's continued infringing activity has and will continue to cause irreparable injury to Plaintiffs.

52. Plaintiffs are entitled to an injunction under 35 U.S.C. § 283 prohibiting Defendant from further making, using, offering to sell, selling, and importing the infringing Merak and Logan products and any other infringing helmet.

53. Plaintiffs are entitled to recover all monetary damages caused by Defendant's infringing conduct under 35 U.S.C. § 284, including lost profits and/or reasonable royalties.

54. Given Defendant's deliberate and willful infringement, Defendant's conduct is exceptional and Plaintiffs are entitled to enhanced damages and attorneys' fees and costs along with prejudgment interest under 35 U.S.C. §§ 284, 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

55. That this Court enter judgment that Defendant has directly and indirectly infringed the '373 patent and that the claims of the '373 patent are not invalid;

56. That this Court enter a preliminary and permanent injunction against Defendant prohibiting Defendant from any further direct or indirect infringement of the '373 patent through making, using, offering to sell, selling, or importing the infringing Merak and Logan products and any other product that infringes the '373 patent;

57. That this Court award Plaintiffs all damages caused by Defendant's infringing actions;

58. That this Court find this case exceptional and award Plaintiffs enhanced damages and all attorneys' fees and costs incurred by Plaintiffs in this action;

59. For any further relief that this Court deems equitable and just.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial on all issues so triable.

Respectfully submitted this 4th day of August, 2021.

DORSEY & WHITNEY LLP

s/ Gregory S. Tamkin

Gregory S. Tamkin

Maral J. Shoaie

1400 Wewatta Street, Suite 400

Denver, Colorado 80202-5549

Telephone: (303) 629-3400

E-mail: tamkin.greg@dorsey.com

shoaie.maral@dorsey.com

Mark A. Miller

Brett L. Foster

111 S. Main St., Suite 2100

Salt Lake City, Utah 84111

Telephone: (801) 933-7360

Email: miller.mark@dorsey.com

foster.brett@dorsey.com

Erin Kolter

701 Fifth Avenue, Suite 6100

Seattle, Washington 98104

Telephone: (206) 903-8800

Email: kolter.erin@dorsey.com

ATTORNEYS FOR PLAINTIFFS

JS 44 (Rev. 10/20) District of Colorado

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

SMITH SPORT OPTICS, INC.
and KOROYD SARL

+

(b) County of Residence of First Listed Plaintiff New Castle, DE
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Dorsey & Whitney LLP, 1400 Wewatta Street, Suite 400
Denver, CO, 80202
(303) 629-3400

+

DEFENDANTS

THE BURTON CORPORATION

County of Residence of First Listed Defendant Chittenden, VT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|--|--|---|---|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
35 U.S.C. § 271

Brief description of cause:
PATENT INFRINGEMENT

☐ AP Docket

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

August 4, 2021

SIGNATURE OF ATTORNEY OF RECORD

s/ Gregory S. Tamkin

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.