

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

APPLIED BIOKINETICS LLC

Plaintiff,

V.

CVS PHARMACY, INC.,

Defendant.

[illegible]

Civil Action No. 6:21-cv-557

JURY DEMANDED

PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Applied Biokinetics LLC (“ABK” or “Plaintiff”) files this Complaint for patent infringement against CVS Pharmacy, Inc. (“CVS” or “Defendant”).

THE PARTIES

1. Plaintiff ABK is a Texas limited liability company with a place of business in Spring, Texas.
2. On information and belief, Defendant CVS Pharmacy, Inc. is a corporation organized and existing under the laws of Delaware.
3. On information and belief, CVS Pharmacy, Inc. is registered to do business in Texas, and may be served through its registered agent for service of process, CT Corporation System, 1999 Bryan St., Suite. 900, Dallas, Texas 75201.
4. On information and belief, CVS owns and operates pharmacies and retail medical clinics inside Target Corporation's stores.

JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. Jurisdiction as to these claims is conferred on this Court by 35 U.S.C. §§1331 and 1338(a).

6. This Court has personal jurisdiction over CVS because, directly or through intermediaries, CVS has committed acts within the Western District of Texas giving rise to this action and/or has established minimum contacts with the Western District of Texas such that the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice.

7. Venue is proper in this District under 28 U.S.C. §§ 1391(b), (c), (d) and 1400(b). CVS is registered to do business in Texas and, upon information and belief, CVS has transacted business in this District and has committed acts of direct and indirect infringement in this District by, among other things, importing, offering to sell, and selling products that infringe ABK's patents, as explained below. CVS maintains regular and established places of business in the Western District of Texas, including at 500 Congress Ave, Austin, Texas 78701; 601 N. Valley Mills Drive, Waco, Texas 76710; 1513 S. Valley Mills Drive, Waco, Texas 76711; 5401 Bosque Blvd., Waco, Texas 76710; and 820 S. 5th St., Waco, TX 76706, shown below:



8. In addition, CVS has placed or contributed to placing infringing products into the stream of commerce via an established distribution channel knowing or understanding that such products would be sold and used in the United States, including in the Western District of Texas.

9. This Court has specific personal jurisdiction over CVS at least in part because CVS conducts business in this Judicial District. ABK's causes of action arise, at least in part, from CVS's contacts with and activities in the State of Texas and this Judicial District. Upon information and belief, the CVS has committed acts of infringement within the State of Texas and this Judicial District by, *inter alia*, directly and/or indirectly making, using, selling, offering to sell, or importing products that infringe one or more claims of ABK's patents described below. CVS's infringing acts within this Judicial District give rise to this action and have established minimum contacts with the forum state of Texas. On information and belief, CVS also has derived substantial revenues from infringing acts in this Judicial District, including from the sale and use of infringing products including, but not limited to, the products accused of infringement below.

FACTUAL BACKGROUND

10. ABK was founded in 2008 by Donald P. Bushby, an engineer and prolific inventor who has invented and validated several innovative technology solutions.

11. In the early 2000's, Mr. Bushby had learned about the activity of "roller-skiing," a sport like rollerblading utilizing two inline wheels supporting an elongated ski-like structure. To slow down, users of the devices needed to squat down and pull upward on handles attached to cables. Mr. Bushby developed an improved braking approach that simulated a "snowplow" effect by rotating the binding to translate into a braking force, while the skis remained parallel. While developing and testing his invention, Mr. Bushby developed a muscular injury that persisted for weeks, and led to excruciating pain. In discussing his injury with his doctor, Mr. Bushby learned that he had a micro-tear in the fascia of his injured muscle resulting in inflammation and pain, the

standard treatment for which was to receive cortisone injections. Mr. Bushby refused the injections, believing that such treatment was painful, expensive, and did not properly address the root issue involving the damaged fascia. Mr. Bushby went on to perform research at his local library to learn more about the body, biomechanics, stress, and the tough connective tissue known as fascia. He concluded that there was a need for a system to: treat pain, provide direct anatomical support, and protect fascia from damaging stress, thus allowing tissue healing and rapid pain recover that was inexpensive, fast acting and easy to apply at home. This led Mr. Bushby to develop a novel system which included pre-cut parts with an adhesive layer and removable cover layer for ease of handling and self-application. The system includes a single woven support layer with high strength and low elongation in at least one direction, such that when it is applied to the body part it can provide support and reduce stress on the underlying fascia.

12. Mr. Bushby founded Applied BioKinetics to develop and commercialize his ideas.

13. ABK is an inventor-controlled entity.

14. ABK is a practicing entity that has commercialized its intellectual property through licensing and also through the development and sale of products. For example, ABK developed the FasciaDerm line of products as show here:



TECHNOLOGY BACKGROUND

15. Several of the products accused of infringement below are products that are used to treat fascia injury.

EXEMPLARY PRODUCTS

16. Examples of products accused of infringement (the “Exemplary Products”) below include:
- Target-brand Kinesiology Tape (“Target Tape”)
 - CVS-brand Kinesiology Tape
 - CVS-brand Pro Strength Kinesiology Tape (together with the CVS product above, “CVS Tape”)
 - KT Tape (original)
 - KT Tape Gentle
 - KT Tape Pro
 - KT Tape Pro Extreme (together with the KT products above, “KT Tape”)
 - StrengthTape (products sold in pre-cut rolls and also the “StrengthTape Kinesiology Tape Kit – Ankle & Foot”, collectively “StrengthTape”)

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 10,212,987

17. ABK incorporates by reference the paragraphs above as if fully set forth herein.
18. On February 26, 2019, United States Patent No. 10,212,987 (the ‘987 patent”) entitled “Method of Manufacturing an Anatomical Support System” was duly and legally issued after full and fair examination. ABK is the owner of all right, title, and interest in and to the patent by assignment, with full right to bring suit to enforce the patent, including the right to recover for past infringement damages and the right to recover future royalties, damages, and income. A true copy of the ‘987 patent is attached as Exhibit 1.
19. The ‘987 patent is valid and enforceable.
20. CVS has directly infringed, and are continuing to directly infringe, literally or under the doctrine of equivalents, at least independent claims 18, 19, and 22 - 31 of the ‘987 patent by

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