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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

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

Plaintiffs,

vs.

THE BURTON CORPORATION, a Vermont
company,

Defendant.

CASE NO: 2:21-cv-00425-DAO

Magistrate Judge Daphne A. Oberg

**COMPLAINT FOR PATENT
INFRINGEMENT**

Jury Trial Demanded

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 Utah.

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 a regular and established place of business at 825 Main Street, Park City, Utah 84060.

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

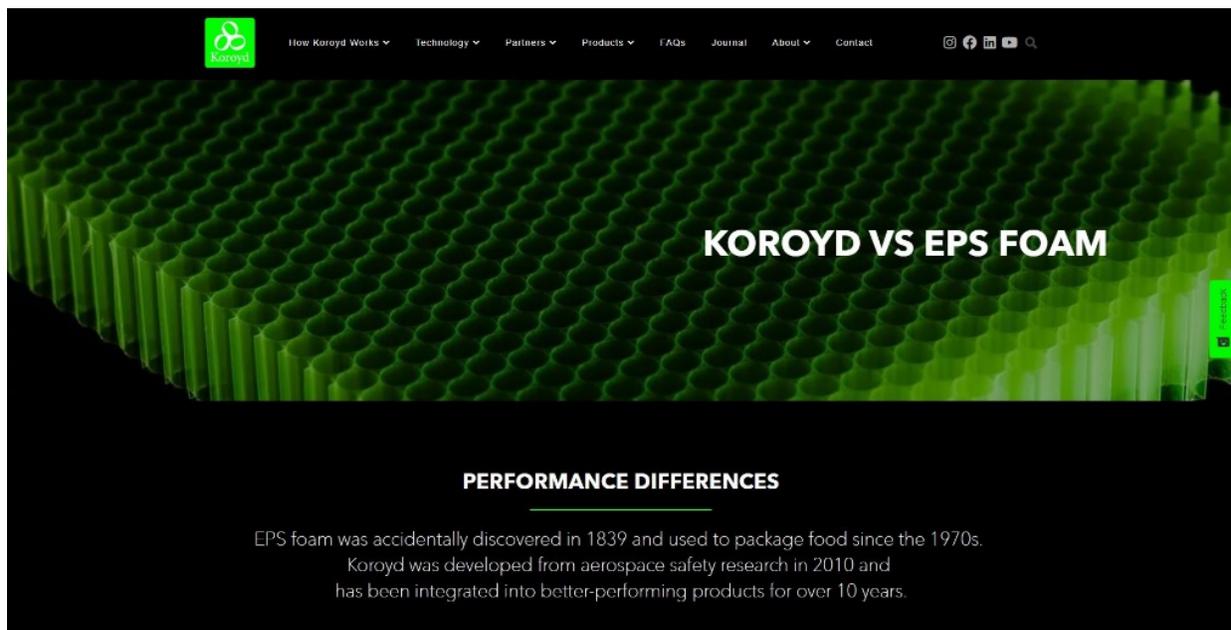
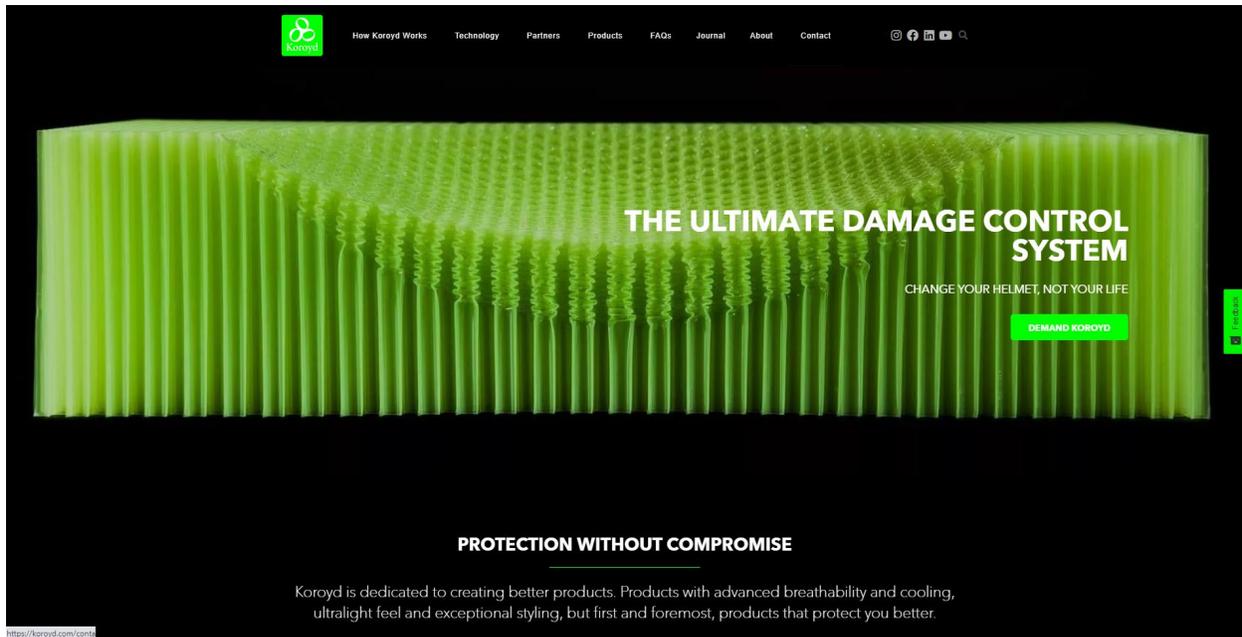
Vantage, showing Koroyd® open cell array structures in Koroyd®'s signature green color visible through vents in the shell:



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.

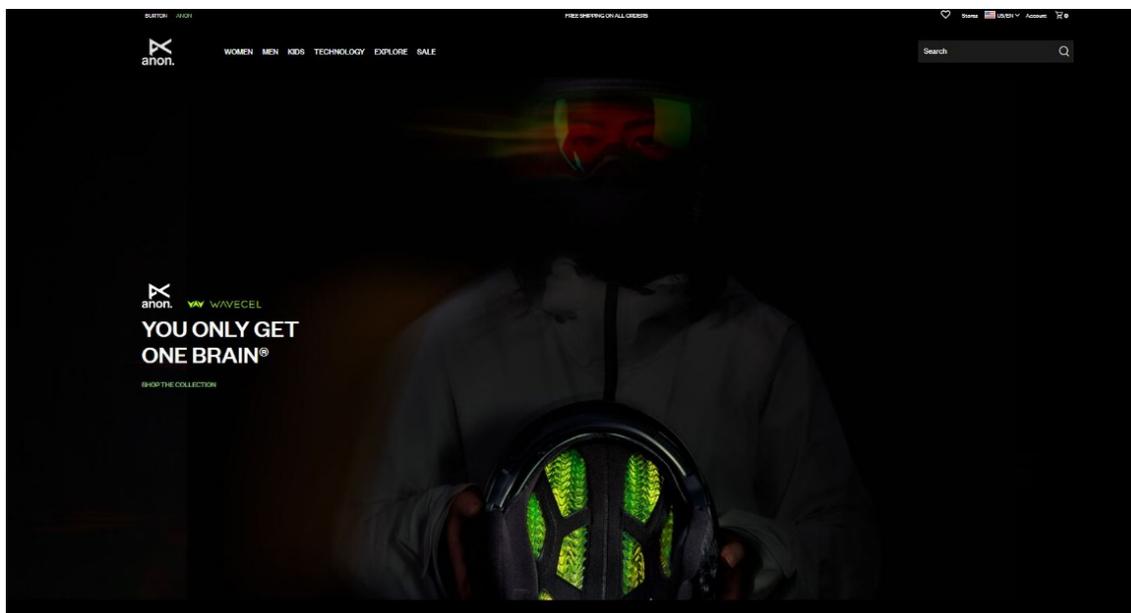
25. On information and belief, WaveCel[®] was developed specifically to compete with Koroyd[®] and marketed so as to draft off of Plaintiffs' years of combined efforts in blazing a path of innovation in the helmet industry.

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.

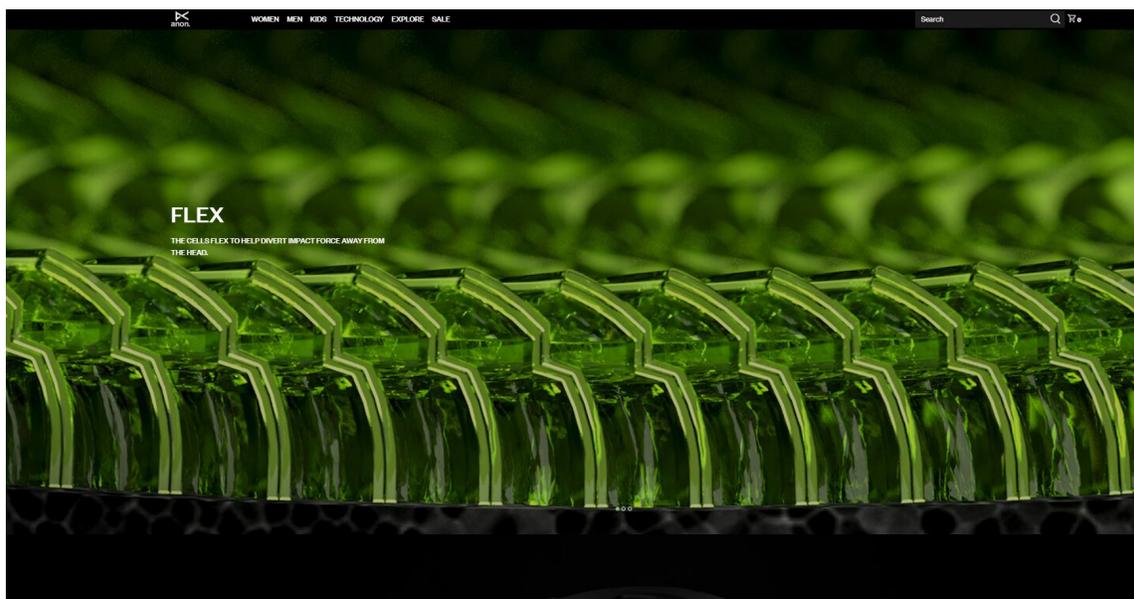
27. Below is an image from the wavecel.com website as archived on web.archive.org, with a picture of the Merak helmet next to the words “Introducing,” “anon,” and “WAVECEL.” Green WaveCel® material is visible through vents in the black helmet as depicted over a black background.



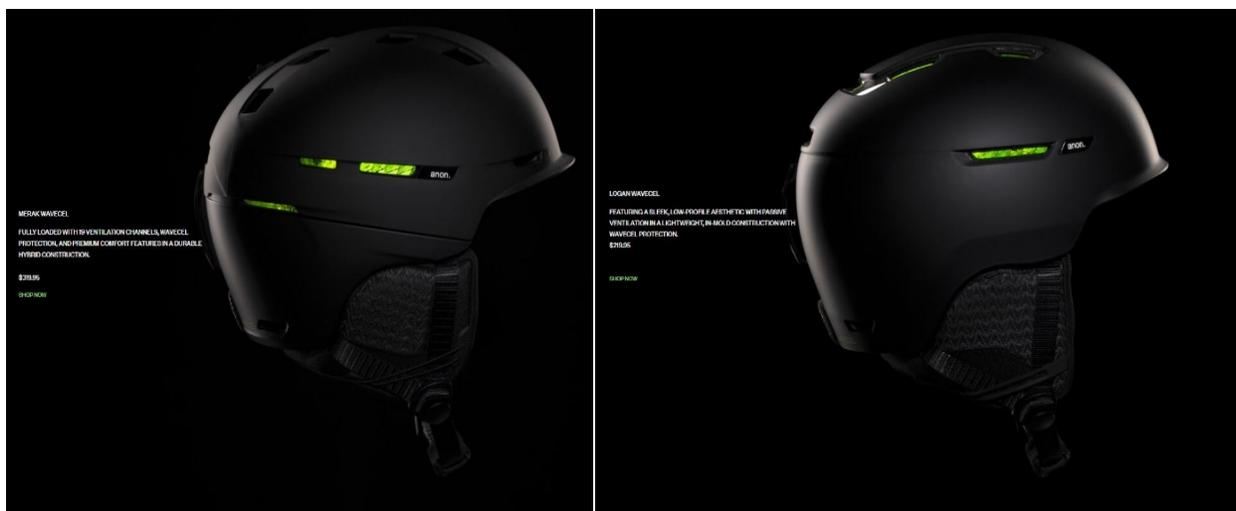
28. Below is an image from Defendant's marketing material showing green WaveCel® material inside a black helmet against a black background.



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



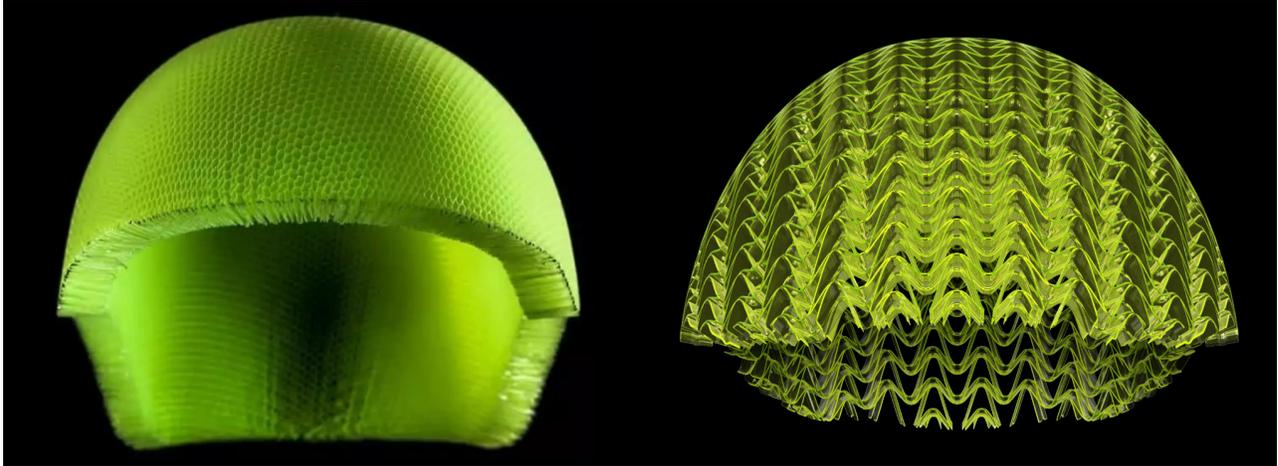
30. Below are images from Defendant’s marketing material showing the Anon WaveCel® helmets with green WaveCel® showing brightly through the vents of the respective black helmets against a black background.



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.

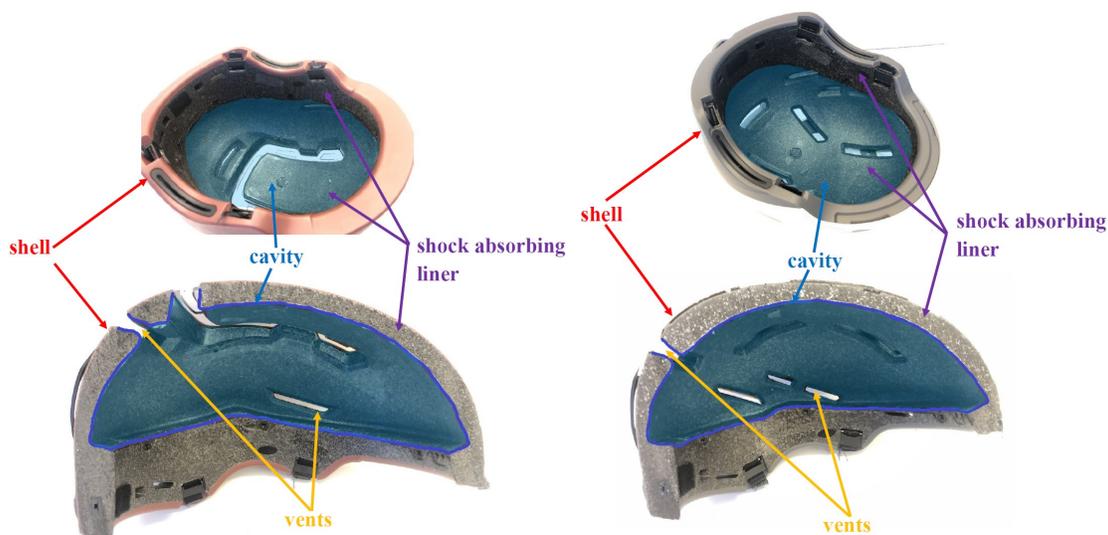
37. The Anon[®] Merak and Logan helmets have a shell comprising a plurality of vents including a first vent defining a first opening and a second vent defining a second opening.



LOGAN

MERAK

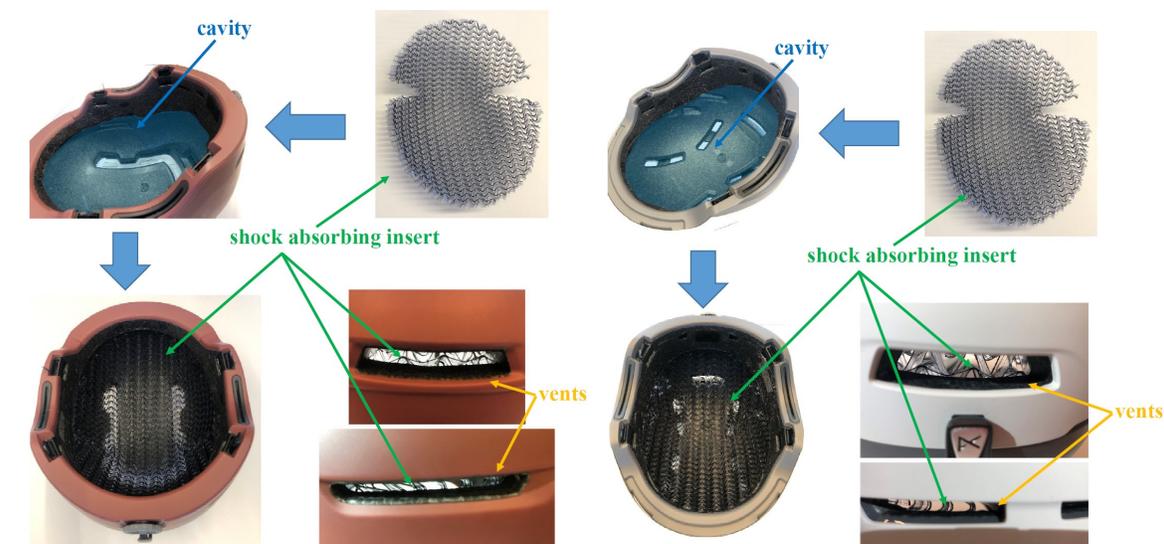
38. The Anon[®] Merak and Logan helmets have a shock absorbing liner adjacent to and attached to the shell and comprising a cavity at least partially aligned with the plurality of vents.



LOGAN

MERAK

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.



LOGAN

MERAK

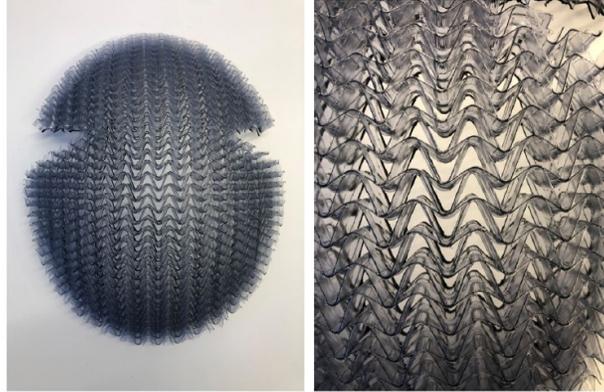
40. In the Anon[®] Merak and Logan helmets, at least a portion of the shock absorbing liner is positioned between the shell and the shock absorbing insert.



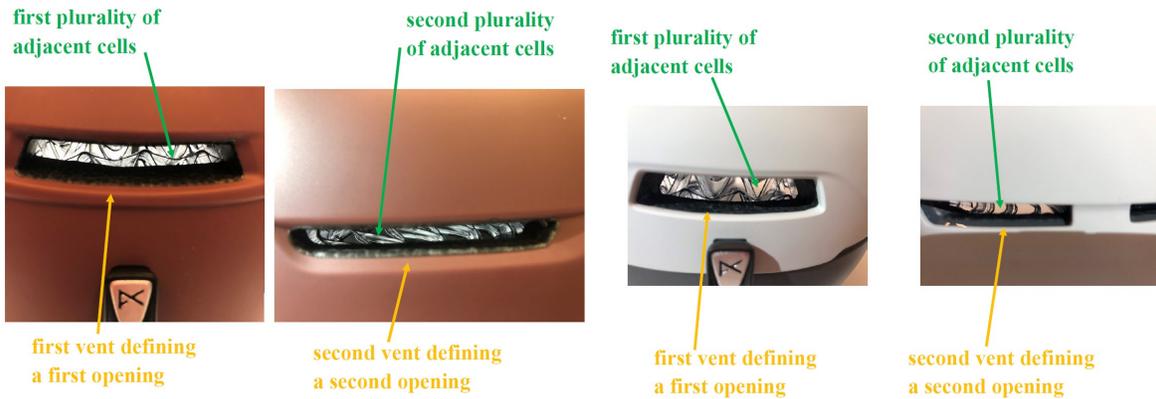
LOGAN

MERAK

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.



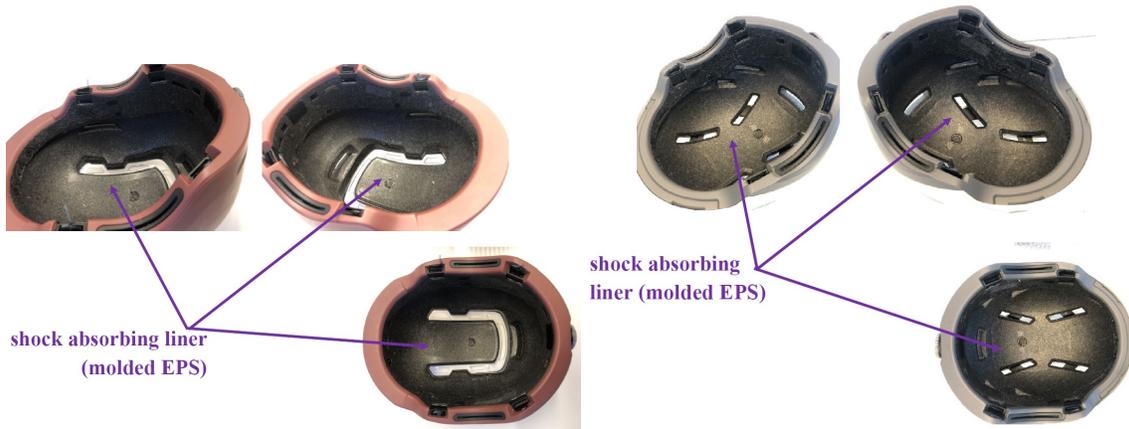
42. In the Anon[®] Merak and Logan helmets, the first longitudinal ends of a first plurality of adjacent cells of the array of energy absorbing cells are positioned within a perimeter of the first opening and the first longitudinal ends of a second plurality of adjacent cells of the array of energy absorbing 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.



shock absorbing liner
(molded EPS)

shock absorbing
liner (molded EPS)

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.

Dated: July 13, 2021

Respectfully submitted,

By: s/ Mark A. Miller

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