

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

<p>KNAPE & VOGT MANUFACTURING COMPANY, a Michigan corporation,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>DESIGN IDEAS, LTD.,</p> <p style="text-align: center;">Defendant.</p>	<p>Civil Action No. _____</p> <p>Hon. _____</p>
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COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Knape & Vogt Manufacturing Company (hereinafter “Plaintiff” or “KV”), by and through its undersigned attorneys, for its Declaratory Judgment Complaint against Defendant Design Ideas, Ltd. (hereinafter “Defendant” or “Design Ideas”), alleges as follows:

THE PARTIES

1. Knape & Vogt is a corporation organized and existing under the laws of the State of Michigan and has its principal place of business at 2700 Oak Industrial Drive, Grand Rapids, Michigan 49505.

2. Upon information and belief, Design Ideas is an Illinois corporation and has its principal place of business at 2521 Stockyard Road, Springfield, Illinois 62702.

NATURE OF ACTION

3 This is an action for declaratory judgment arising under the patent laws of the United States, 35 U.S.C. § 101 *et seq.*, for a declaration that U.S. Patent No. 7,428,976 (the ‘976

patent) (Ex. A); U.S. Design Patent No. D624,753 (the '753 patent) (Ex. B); U.S. Patent No. 8,006,858 (the '858 patent) (Ex. C); U.S. Patent No. 8,584,889 (the '889 patent) (Ex. D); U.S. Design Patent No. D847,510 (the '510 patent) (Ex. E); U.S. Design Patent No. D856,678 (the '678 patent) (Ex. F); U.S. Patent No. 10,524,569 (the '569 patent) (Ex. G); and U.S. Design Patent No. D895,291 (the '291 patent) (Ex. H) (collectively, the "patents in suit") are not infringed by any product sold by KV and are invalid.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 with respect to the claims arising under the Patent Act, 35 U.S.C. § 101, *et seq.*, and pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

5. There is complete diversity between KV and Design Ideas and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs. Therefore, this Court also has subject matter jurisdiction over this action under 28 U.S.C. § 1332.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400 because a substantial part of the events giving rise in the claims occurred in this District, and Design Ideas is subject to personal jurisdiction in this judicial District based upon, among other things, its business transactions within this District.

7. Upon information and belief, there is personal jurisdiction over Design Ideas since Design Ideas is doing business within this State and judicial District, transacts business within this State and judicial District, derives substantial revenue from intra-state and inter-state commerce, and is otherwise within the jurisdiction of this Court.

8. Upon information and belief, there is personal jurisdiction over Design Ideas by reason of the assertions made against KV in this District, namely, the allegation that KV infringes the patents in suit. While KV is not a party to the lawsuit, Design Ideas has instituted litigation (*Design Ideas, Ltd. v. Lowe's Home Centers, LLC*, 3:20-cv-03204 (C.D. Ill.)) against two of KV's retail customers alleging that a KV product infringes the patents in suit (Partial Customer Litigation).

9. Allegations that a KV product infringes the patents in suit shows that there has been and now is an actual controversy between KV and Design Ideas regarding the non-infringement and invalidity of the patents in suit.

FACTUAL BACKGROUND

10. Beginning in 2016, KV developed a wire mesh basket under the internal product designation 0335-BSKT-7CN and 0335-BSKT-7SG. An image of this wire basket is shown below (the KV Basket):



11. Over the past several years, the KV Basket has been marketed to a number of customers in the United States. Some of these customers are retailers that resell the KV Basket.

12. Design Ideas has sued two of KV's many retail customers in the Central District of Illinois, alleging that the KV Basket infringes the patents in suit.

COUNT I

**DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF U.S. PATENT NO. 7,428,976**

13. KV repeats and re-alleges each allegation in paragraphs 1-12 of this Complaint as if set forth fully herein.

14. An actual controversy has arisen and now exists between KV and Design Ideas concerning whether the KV Basket infringe U.S. Patent No. 7,428,976 (the '976 patent).

15. KV has not infringed and does not infringe the claims of the '976 patent. In the Partial Customer Litigation, Design Ideas has asserted that the KV Basket infringes at least claim 1. However, multiple limitations of that claim and other claims are missing both literally and under the Doctrine of Equivalents. For example, without limitation, the "rail," "first and second sections of said rail are generally parallel," and "horizontally extending outwardly" limitations are missing from the KV Basket.

16. In particular, the manufacture, importation, use, offer for sale, and/or sale in the United States of the KV Basket does not infringe, either literally or under the doctrine of equivalents, the claims of the '976 patent.

17. K&V does not contribute to the infringement of, or induce others to infringe, the '976 patent through distribution and/or sale of the K&V Basket.

18. By virtue of the foregoing, KV desires a judicial determination of the parties' rights and duties with respect to the '976 patent, namely, that the KV Basket does not infringe any claim of the '976 patent.

19. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

20. This is an exceptional case which entitles KV to an award of reasonable attorney fees under 35 U.S.C. § 285.

COUNT II

DECLARATORY JUDGMENT OF INVALIDITY OF U.S. PATENT NO. 7,428,976

21. KV repeats and re-alleges each allegation in paragraphs 1-20 of this Complaint as if set forth fully herein.

22. An actual controversy has arisen and now exists between KV and Design Ideas concerning whether the '976 patent is invalid.

23. Upon information and belief, the claims the '976 patent are invalid for failing to comply with one or more of the conditions and requirements of the patent laws, including, but not limited to 35 U.S.C. §§ 102, 103, and/or 112 and/or the rules, regulations, and laws pertaining thereto. For example, to the extent that the claims of the '976 patent are construed broadly to cover the KV Basket, the claims are invalid under 35 U.S.C. § 112 for indefiniteness and failure to meet the written description requirement. Moreover, the prior art would render such broadly construed claims either anticipated and/or obvious. For example, claims of similar scope having a similar priority claim were found unpatentable in Europe over Publication WO 03/047987; U.S. Patent No. 1,445,259; and U.S. Patent No. 463,964A. These same references along with the other prior art cited during the European prosecution render the asserted claim(s) invalid. Claims of similar scope were also initially found unpatentable in Japan based upon Japanese Utility model Application No. H4-55867, Japanese Unexamined Patent Application Publication No. 2001-199439, Japanese Unexamined Patent Application Publication No. 2001-270515, and Japanese Utility Model No. H4-11357. Not all of this prior art was provided to the United States Patent and

Trademark Office (USPTO) during prosecution. In addition, the art cited in related Re-exam 90/014,233 includes prior art and patentability arguments not considered during prosecution of this patent. Claims of similar scope were found to have a substantial new question of patentability in that re-exam. Moreover, in addition to the prior art of record, references JP2002058555; U.S. Patent No. 5,465,901; U.S. Patent No. 6,491,173; U.S. Patent No. 6,467,860; DE19842666; GB672538; JPH08322662; JPH09234131; and JP3070896U anticipate the claims and/or render them obvious depending upon the breadth of the claim construction. For example, without limitation, at least the limitations of claim 1 are disclosed in JP202058555.

24. By virtue of the foregoing, KV desires a judicial determination of the parties' rights and duties with respect to the '976 patent, namely, that the claims of the '976 patent are invalid.

25. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

26. This is an exceptional case which entitled KV to an award of reasonable attorney fees under 35 U.S.C. § 285.

COUNT III

DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. D624,753

27. KV repeats and re-alleges each allegation in paragraphs 1-26 of this Complaint as if set forth fully herein.

28. An actual controversy has arisen and now exists between KV and Design Ideas concerning whether the KV Basket infringe U.S. Patent No. D624,753 (the '753 patent).

29. KV has not infringed and does not infringe the single claim of the '753 patent. Any similarities between the articles relate to mere concepts of the designs or the functional aspects

of the comparative features, neither of which are to be considered in assessing infringement of design patents. In appropriately considering the claimed design as a whole, an ordinary observer would not find any substantial similarity to the whole of the corresponding portion of the KV Basket. For example, without limitation, the prominent cutout feature of the claimed design has a much wider appearance than the cutout of the KV Basket. The claimed design also includes a curved bottom side along the cutout, as compared to a straight bottom side of the KV Basket. The claimed design also has a flat rim profile, as compared to the non-flat rim provided in the KV Basket. At least these notable differences contribute to the articles having overall appearances that are not substantially the same.

30. In particular, the manufacture, importation, use, offer for sale, and/or sale in the United States of the KV Basket does not infringe, either literally or under the doctrine of equivalents, the single claim of the '753 patent.

31. K&V does not contribute to the infringement of, or induce others to infringe, the '753 patent through distribution and/or sale of the K&V Basket.

32. By virtue of the foregoing, KV desires a judicial determination of the parties' rights and duties with respect to the '753 patent, namely, that the KV Basket does not infringe the '753 patent.

33. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

34. This is an exceptional case which entitles KV to an award of reasonable attorney fees under 35 U.S.C. § 285.

COUNT IV

DECLARATORY JUDGMENT OF INVALIDITY OF U.S. PATENT NO. D624,753

35. KV repeats and re-alleges each allegation in paragraphs 1-34 of this Complaint as if set forth fully herein.

36. An actual controversy has arisen and now exists between KV and Design Ideas concerning whether the '753 patent is invalid.

37. Upon information and belief, the single claim of the '753 patent is invalid for failing to comply with one or more of the conditions and requirements of the patent laws, including, but not limited to 35 U.S.C. §§ 102, 103, 112, and/or 171 and/or the rules, regulations, and laws pertaining thereto. For example, the entire design of the '753 patent is dictated solely by its function. To the extent that any aspect of the design is not dictated solely by function, the design as a whole is anticipated or obvious to a designer of ordinary skill who designs baskets.

38. There is also no support in the written description of the parent D653,063 patent for the boundary line introduced in the application that led to the '753 patent. The continuity claim for the '753 patent is, therefore, invalid such that the application priority date is the application filing date of June 25, 2008. Accordingly, the basket design disclosed in the Appendix of U.S. Patent No. D481,232, publically available at least as early as February 27, 2003, and the basket described as being on sale at least as early as October 2003, per the Declaration included in the file history for U.S. Patent No. D567,553, are available as prior art with respect to the '753 patent. Each of these prior basket designs either anticipates and/or renders obvious the claimed design.

39. By virtue of the foregoing, KV desires a judicial determination of the parties' rights and duties with respect to the '753 patent, namely, that it is invalid.

40. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

41. This is an exceptional case which entitled KV to an award of reasonable attorney fees under 35 U.S.C. § 285.

COUNT V

DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF U.S. PATENT NO. 8,006,858

42. KV repeats and re-alleges each allegation in paragraphs 1-41 of this Complaint as if set forth fully herein.

43. An actual controversy has arisen and now exists between KV and Design Ideas concerning whether the KV Basket infringe U.S. Patent No. 8,006,858 (the '858 patent).

44. KV has not infringed and does not infringe the claims of the '858 patent. In the Partial Customer Litigation, Design Ideas has asserted that the KV Basket infringes at least claim 1. However, multiple limitations of that claim and the other claims are missing from the KV Basket, both literally and under the Doctrine of Equivalents. For example, without limitation, the "rail," "joined," and "joining" limitations are not present in the KV Basket.

45. In particular, the manufacture, importation, use, offer for sale, and/or sale in the United States of the KV Basket does not infringe, either literally or under the doctrine of equivalents, the claims of the '858 patent.

46. K&V does not contribute to the infringement of, or induce others to infringe, the '858 patent through distribution and/or sale of the K&V Basket.

47. By virtue of the foregoing, KV desires a judicial determination of the parties' rights and duties with respect to the '858 patent, namely that the KV Basket does not infringe any claim of the '858 patent.

48. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

49. This is an exceptional case which entitles KV to an award of reasonable attorney fees under 35 U.S.C. § 285.

COUNT VI

DECLARATORY JUDGMENT OF INVALIDITY OF U.S. PATENT NO. 8,006,858

50. KV repeats and re-alleges each allegation in paragraphs 1-49 of this Complaint as if set forth fully herein.

51. An actual controversy has arisen and now exists between KV and Design Ideas concerning whether the '858 patent is invalid.

52. Upon information and belief, the claims the '976 patent are invalid for failing to comply with one or more of the conditions and requirements of the patent laws, including, but not limited to 35 U.S.C. §§ 102, 103, and/or 112 and/or the rules, regulations, and laws pertaining thereto. For example, to the extent that the claims of the '976 patent are construed broadly to cover the KV Basket, the claims are invalid under 35 U.S.C. § 112 for indefiniteness and failure to meet the written description requirement. Moreover, the prior art would render such broadly construed claims either anticipated and/or obvious. For example, claims of similar scope having a similar priority claim were found unpatentable in Europe over Publication WO 03/047987; U.S. Patent No. 1,445,259; and U.S. Patent No. 463,964A. These same references along with the other

prior art cited during the European prosecution render the asserted claim(s) invalid. Claims of similar scope were also initially found unpatentable in Japan based upon Japanese Utility model Application No. H4-55867, Japanese Unexamined Patent Application Publication No. 2001-199439, Japanese Unexamined Patent Application Publication No. 2001-270515, and Japanese Utility Model No. H4-11357. Not all of this prior art was provided to the United States Patent and Trademark Office (USPTO) during prosecution. In addition, the art cited in related Re-exam 90/014,233 includes prior art and patentability arguments not considered during prosecution of this patent. Claims of similar scope were found to have a substantial new question of patentability in that re-exam. Moreover, in addition to the prior art of record, references JP2002058555; U.S. Patent No. 5,465,901; U.S. Patent No. 6,491,173; U.S. Patent No. 6,467,860; DE19842666; GB672538; JPH08322662; JPH09234131; and JP3070896U anticipate the claims and/or render them obvious depending upon the breadth of the claim construction. For example, without limitation, at least the limitations of claim 1 are disclosed in JP202058555.

53. By virtue of the foregoing, KV desires a judicial determination of the parties' rights and duties with respect to the '976 patent, namely, that the claims of the '976 patent are invalid.

54. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

55. This is an exceptional case which entitled KV to an award of reasonable attorney fees under 35 U.S.C. § 285.

COUNT VII

**DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF U.S. PATENT NO. 8,584,889**

56. KV repeats and re-alleges each allegation in paragraphs 1-55 of this Complaint as if set forth fully herein.

57. An actual controversy has arisen and now exists between KV and Design Ideas concerning whether the KV Basket infringe U.S. Patent No. 8,584,889 (the '889 patent).

58. KV has not infringed and does not infringe the claims of the '889 patent. In the Partial Customer Litigation, Design Ideas has asserted that at least claim 3 of the '889 patent is infringed. However, multiple limitations of that claim and other claims are missing both literally and under the Doctrine of Equivalents. For example, without limitation, the "rail," "generally parallel," and "horizontally extending outwardly" limitations are missing from the KV Basket.

59. In particular, the manufacture, importation, use, offer for sale, and/or sale in the United States of the KV Basket does not infringe, either literally or under the doctrine of equivalents, the claims of the '889 patent.

60. K&V does not contribute to the infringement of, or induce others to infringe, the '889 patent through distribution and/or sale of the K&V Basket.

61. By virtue of the foregoing, KV desires a judicial determination of the parties' rights and duties with respect to the '889 patent, namely, that the KV Basket does not infringe any claim of the '889 patent.

62. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

63. This is an exceptional case which entitles KV to an award of reasonable attorney fees under 35 U.S.C. § 285.

COUNT VIII

DECLARATORY JUDGMENT OF INVALIDITY OF U.S. PATENT NO. 8,584,889

64. KV repeats and re-alleges each allegation in paragraphs 1-63 of this Complaint as if set forth fully herein.

65. An actual controversy has arisen and now exists between KV and Design Ideas concerning whether the '889 patent is invalid.

66. Upon information and belief, the claims the '889 patent are invalid for failing to comply with one or more of the conditions and requirements of the patent laws, including, but not limited to 35 U.S.C. §§ 102, 103, and/or 112 and/or the rules, regulations, and laws pertaining thereto. For example, to the extent that the claims of the '889 patent are construed broadly to cover the KV Basket, the claims are invalid under 35 U.S.C. § 112 for indefiniteness and failure to meet the written description requirement. Moreover, the prior art would render such broadly construed claims either anticipated and/or obvious. For example, claims of similar scope having a similar priority claim were found unpatentable in Europe over Publication WO 03/047987; U.S. Patent No. 1,445,259; and U.S. Patent No. 463,964A. These same references along with the other prior art cited during the European prosecution render the asserted claim(s) invalid. Claims of similar scope were also initially found unpatentable in Japan based upon Japanese Utility model Application No. H4-55867, Japanese Unexamined Patent Application Publication No. 2001-199439, Japanese Unexamined Patent Application Publication No. 2001-270515, and Japanese Utility Model No. H4-11357. Not all of this prior art was provided to the United States Patent and

Trademark Office (USPTO) during prosecution. In addition, the art cited in related Re-exam 90/014,233 includes prior art and patentability arguments not considered during prosecution of this patent. Claims of similar scope were found to have a substantial new question of patentability in that re-exam. Moreover, in addition to the prior art of record, references JP2002058555; U.S. Patent No. 5,465,901; U.S. Patent No. 6,491,173; U.S. Patent No. 6,467,860; DE19842666; GB672538; JPH08322662; JPH09234131; and JP3070896U anticipate the claims and/or render them obvious depending upon the breadth of the claim construction. For example, without limitation, at least the limitations of claim 3 are disclosed in JP202058555.

67. By virtue of the foregoing, KV desires a judicial determination of the parties' rights and duties with respect to the '889 patent, namely, that the claims of the '889 patent are invalid.

68. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

69. This is an exceptional case which entitled KV to an award of reasonable attorney fees under 35 U.S.C. § 285.

COUNT IX

DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. D847,510

70. KV repeats and re-alleges each allegation in paragraphs 1-69 of this Complaint as if set forth fully herein.

71. An actual controversy has arisen and now exists between KV and Design Ideas concerning whether the KV Basket infringe U.S. Patent No. D847,510 (the '510 patent).

72. KV has not infringed and does not infringe the single claim of the '510 patent. Any similarities between the articles relate to mere concepts of the designs or the functional aspects

of the comparative features, neither of which are to be considered in assessing infringement of design patents. In appropriately considering the claimed design as a whole, an ordinary observer would not find any substantial similarity to the whole of the corresponding portion of the KV Basket. For example, without limitation, the cutout area in the claimed design is much larger in comparison to the claimed width of the basket. The claimed design also has a flat ridge which protrudes outwardly that is lacking the KV Basket. The claimed design also has a flat rim profile which is lacking in the KV Basket. At least these notable differences contribute to the articles having overall appearances that are not substantially the same.

73. In particular, the manufacture, importation, use, offer for sale, and/or sale in the United States of the KV Basket does not infringe, either literally or under the doctrine of equivalents, the single claim of the '510 patent.

74. K&V does not contribute to the infringement of, or induce others to infringe, the '510 patent through distribution and/or sale of the K&V Basket.

75. By virtue of the foregoing, KV desires a judicial determination of the parties' rights and duties with respect to the '510 patent, namely that the KV Basket does not infringe the '510 patent.

76. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

77. This is an exceptional case which entitles KV to an award of reasonable attorney fees under 35 U.S.C. § 285.

COUNT X

DECLARATORY JUDGMENT OF INVALIDITY OF U.S. PATENT NO. D847,510

78. KV repeats and re-alleges each allegation in paragraphs 1-77 of this Complaint as if set forth fully herein.

79. An actual controversy has arisen and now exists between KV and Design Ideas concerning whether the '510 patent is invalid.

80. Upon information and belief, the single claim of the '510 patent is invalid for failing to comply with one or more of the conditions and requirements of the patent laws, including, but not limited to 35 U.S.C. §§ 102, 103, 112, and/or 171 and/or the rules, regulations, and laws pertaining thereto. For example, the entire design of the '510 patent is dictated solely by its function. To the extent that any aspect of the design is not solely dictated by function, the design as a whole is anticipated or obvious to a designer of ordinary skill who designs baskets.

81. The claimed design only claims the front portion of the rim, stopping arbitrarily after the corners. There is no support in the written description of the parent D773,815 patent for such a claim. Accordingly, the continuity claim is invalid and the patent is only entitled, at best, to a priority date based on the August 16, 2016 filing date of the application. The claimed design is invalid as anticipated by or obvious over the disclosure in the Appendix of U.S. Patent No. D481,233 publically available at least as early as February 27, 2003, and a related on-sale bar at least as early as October 2003, as set forth in the Declaration included in the file history for U.S. Patent No. D567,553.

82. By virtue of the foregoing, KV desires a judicial determination of the parties' rights and duties with respect to the '510 patent.

83. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

84. This is an exceptional case which entitled KV to an award of reasonable attorney fees under 35 U.S.C. § 285.

COUNT XI

**DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF U.S. PATENT NO. D856,678**

85. KV repeats and re-alleges each allegation in paragraphs 1-84 of this Complaint as if set forth fully herein.

86. An actual controversy has arisen and now exists between KV and Design Ideas concerning whether the KV Basket infringe U.S. Patent No. D856,678 (the '678 patent).

87. KV has not infringed and does not infringe the single claim of the '678 patent. Any similarities between the articles relate to mere concepts of the designs or the functional aspects of the comparative features, neither of which are to be considered in assessing infringement of design patents. In appropriately considering the claimed design as a whole, an ordinary observer would not find any substantial similarity to the whole of the KV Basket. Arguments made in the file history limit the scope of what could be considered substantially similar to the claimed design, particularly with respect to the length, width, and height ratios of various features that contribute significantly to the overall appearance of the design. In this respect, and without limitation, the width-to-height ratio of the prominent front cutout is greater in the KV Basket than in the claimed design, the cutout of the KV Basket is wider relative to the overall width of the basket than in the claimed design, and the KV Basket cutout is more tapered and has more squared corners than in the claimed design. In addition, the claimed design has a flat rim profile which is lacking in the KV

Basket. Additionally, the claimed design has diamond shaped holes in the mesh which has the longer dimension horizontally. In contrast, the longer dimension of the openings in the mesh for the KV Basket are vertical. At least these noticeable differences contribute to the articles having overall appearances that are not substantially the same.

88. In particular, the manufacture, importation, use, offer for sale, and/or sale in the United States of the KV Basket does not infringe, either literally or under the doctrine of equivalents, the single claim of the '678 patent.

89. K&V does not contribute to the infringement of, or induce others to infringe, the '678 patent through distribution and/or sale of the K&V Basket.

90. By virtue of the foregoing, KV desires a judicial determination of the parties' rights and duties with respect to the '678 patent, namely that the KV Basket does not infringe the '678 patent.

91. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

92. This is an exceptional case which entitles KV to an award of reasonable attorney fees under 35 U.S.C. § 285.

COUNT XII

DECLARATORY JUDGMENT OF INVALIDITY OF U.S. PATENT NO. D856,678

93. KV repeats and re-alleges each allegation in paragraphs 1-92 of this Complaint as if set forth fully herein.

94. An actual controversy has arisen and now exists between KV and Design Ideas concerning whether the '678 patent is invalid.

95. Upon information and belief, the single claim of the '678 patent is invalid for failing to comply with one or more of the conditions and requirements of the patent laws, including, but not limited to 35 U.S.C. §§ 102, 103, 112, and/or 171 and/or the rules, regulations, and laws pertaining thereto. For example, the entire design of the '678 patent is dictated solely by its function. To the extent that any aspect of the design is not dictated solely by function, the design as a whole is anticipated or obvious to a designer of ordinary skill who designs baskets.

96. The earliest priority date for the '678 patent is October 31, 2008. The publically available Appendices from the '753 patent and the '510 patent were available at least as early as October 28, 2003, and anticipate and/or render obvious the claimed design.

97. By virtue of the foregoing, KV desires a judicial determination of the parties' rights and duties with respect to the '678 patent.

98. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

99. This is an exceptional case which entitled KV to an award of reasonable attorney fees under 35 U.S.C. § 285.

COUNT XIII

DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF U.S. PATENT NO. 10,524,569

100. KV repeats and re-alleges each allegation in paragraphs 1-99 of this Complaint as if set forth fully herein.

101. An actual controversy has arisen and now exists between KV and Design Ideas concerning whether the KV Basket infringe U.S. Patent No. 10,524,569 (the '569 patent).

102. KV has not infringed and does not infringe the claims of the '569 patent. In the Partial Customer Litigation, Design Ideas has asserted that the KV Basket infringes at least claim 11. However, multiple limitations of that claim and other claims are missing both literally and under the Doctrine of Equivalents. For example, without limitation, the "rail," "substantially right-angled junction," "U-shaped connecting section," and "horizontally extending outwardly" limitations are missing from the KV Basket.

103. In particular, the manufacture, importation, use, offer for sale, and/or sale in the United States of the KV Basket does not infringe, either literally or under the doctrine of equivalents, the claims of the '569 patent.

104. K&V does not contribute to the infringement of, or induce others to infringe, the '569 patent through distribution and/or sale of the K&V Basket.

105. By virtue of the foregoing, KV desires a judicial determination of the parties' rights and duties with respect to the '569 patent, namely, that the KV Basket does not infringe any claim of the '569 patent.

106. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

107. This is an exceptional case which entitles KV to an award of reasonable attorney fees under 35 U.S.C. § 285.

COUNT XIV

DECLARATORY JUDGMENT OF INVALIDITY OF U.S. PATENT NO. 10,524,569

108. KV repeats and re-alleges each allegation in paragraphs 1-107 of this Complaint as if set forth fully herein.

109. An actual controversy has arisen and now exists between KV and Design Ideas concerning whether the '569 patent is invalid.

110. Upon information and belief, the claims the '569 patent are invalid for failing to comply with one or more of the conditions and requirements of the patent laws, including, but not limited to 35 U.S.C. §§ 102, 103, and/or 112 and/or the rules, regulations, and laws pertaining thereto. For example, to the extent that the claims of the '976 patent are construed broadly to cover the KV Basket, the claims are invalid under 35 U.S.C. § 112 for indefiniteness and failure to meet the written description requirement. Moreover, the prior art would render such broadly construed claims either anticipated and/or obvious. In addition to the prior art of record, references JP2002058555; U.S. Patent No. 5,465,901; U.S. Patent No. 6,491,173; U.S. Patent No. 6,467,860; DE19842666; GB672538; JPH08322662; JPH09234131; and JP3070896U anticipate the claims and/or render them obvious depending upon the breadth of the claim construction. For example, without limitation, at least the limitations of claim 1 are disclosed in JP202058555.

111. By virtue of the foregoing, KV desires a judicial determination of the parties' rights and duties with respect to the '569 patent, namely, that the claims of the '569 patent are invalid.

112. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

113. This is an exceptional case which entitled KV to an award of reasonable attorney fees under 35 U.S.C. § 285.

COUNT XV

**DECLARATORY JUDGMENT OF NON-INFRINGEMENT
OF U.S. PATENT NO. D895,291**

114. KV repeats and re-alleges each allegation in paragraphs 1-113 of this Complaint as if set forth fully herein.

115. An actual controversy has arisen and now exists between KV and Design Ideas concerning whether the KV Basket infringe U.S. Patent No. D895,291 (the '291 patent).

116. KV has not infringed and does not infringe the single claim of the '291 patent. Any similarities between the articles relate to mere concepts of the designs or the functional aspects of the comparative features, neither of which are to be considered in assessing infringement of design patents. In appropriately considering the claimed design as a whole, an ordinary observer would not find any substantial similarity to the whole of the corresponding portion of the KV Basket. For example, without limitation, during prosecution of the '291 patent family, arguments were made asserting the significance of certain proportions in differentiating claimed designs from the prior art. The KV Basket exhibits comparable differences in the same proportions, as compared to the design claimed in the '291 patent. In addition, the claimed design has a flat rim profile which is lacking in the KV Basket. Additionally, the claimed design has diamond shaped holes in the mesh which have long dimensions horizontally. In contrast, the longer dimensions of the openings in the mesh for the KV Basket are vertical. At least these noticeable differences contribute to the articles having overall appearances that are not substantially the same.

117. In particular, the manufacture, importation, use, offer for sale, and/or sale in the United States of the KV Basket does not infringe, either literally or under the doctrine of equivalents, the single claim of the '291 patent.

118. K&V does not contribute to the infringement of, or induce others to infringe, the '291 patent through distribution and/or sale of the K&V Basket.

119. By virtue of the foregoing, KV desires a judicial determination of the parties' rights and duties with respect to the '291 patent, namely, the KV Basket does not infringe the '291 patent.

120. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

121. This is an exceptional case which entitles KV to an award of reasonable attorney fees under 35 U.S.C. § 285.

COUNT XVI

DECLARATORY JUDGMENT OF INVALIDITY OF U.S. PATENT NO. D895,291

122. KV repeats and re-alleges each allegation in paragraphs 1-121 of this Complaint as if set forth fully herein.

123. An actual controversy has arisen and now exists between KV and Design Ideas concerning whether the '291 patent is invalid.

124. Upon information and belief, the single claim of the '291 patent is invalid for failing to comply with one or more of the conditions and requirements of the patent laws, including, but not limited to 35 U.S.C. §§ 102, 103, 112, and/or 171 and/or the rules, regulations, and laws pertaining thereto. For example, the entire design of the '291 patent is dictated solely by its function. To the extent that any aspect of the design is not dictated solely by function, the design as a whole is anticipated or obvious to a designer of ordinary skill who designs baskets.

125. There is no support in the written description of the parent U.S. Patent App. No. 29/718,845 for the way the handle opening is disclaimed in the '291 patent. The handle cutout is bounded by new lines not present in the photographs in any of the parent applications included in claimed chain of priority. The continuity claim for the '291 patent is, therefore, invalid such that the application priority date is the application filing date of March 13, 2020. Accordingly, the basket designs disclosed in the Appendix of U.S. Patent No. D759,976, publically available at least as early as June 28, 2016 are available as prior art with respect to the '291 patent. The prior basket designs either anticipate, or renders obvious, the claimed design.

126. The earliest claimed priority date for the '291 patent is October 31, 2008. The publically available Appendices from the '753 patent and the '510 patent were available at least as early as October 28, 2003, and anticipate and/or render obvious the claimed design. The Appendices show cutouts on the long sides of various basket designs, as well as various baskets designs with similar proportions to those of the claimed design.

127. By virtue of the foregoing, KV desires a judicial determination of the parties' rights and duties with respect to the '291 patent.

128. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

129. This is an exceptional case which entitled KV to an award of reasonable attorney fees under 35 U.S.C. § 285.

WHEREFORE, KV prays for the following relief against Design Ideas:

A. for a declaration and judgment declaring that the '976 patent is not infringed by the KV Basket;

B. for a declaration and judgment declaring that asserted claims of the '976 patent are invalid;

C. for a declaration and judgment declaring that the '753 patent is not infringed by the KV Basket;

D. for a declaration and judgment declaring that the '753 patent is invalid;

E. for a declaration and judgment declaring that the '858 patent is not infringed by the KV Basket;

F. for a declaration and judgment declaring that the asserted claims of the '858 patent are invalid;

G. for a declaration and judgment declaring that the '889 patent is not infringed by the KV Basket;

H. for a declaration and judgment declaring that the asserted claims of the '889 patent are invalid;

I. for a declaration and judgment declaring that the '510 patent is not infringed by the KV Basket;

J. for a declaration and judgment declaring that the '510 patent is invalid;

K. for a declaration and judgment declaring that the '678 patent is not infringed by the KV Basket;

L. for a declaration and judgment declaring that the '678 patent is invalid;

M. for a declaration and judgment declaring that the '569 patent is not infringed by the KV Basket;

N. for a declaration and judgment declaring that the asserted claims of the '569 patent are invalid;

O. for a declaration and judgment declaring that the '291 patent is not infringed by the KV Basket;

P. for a declaration and judgment declaring that the '291 patent is invalid;

Q. for a declaration and judgment declaring this case to be exceptional under 35 U.S.C. § 285;

R. for an award to KV of its costs, expenses, and reasonable attorney fees as permitted by law; and

S. for an award to KV for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Dated: December 17, 2020

s/Matthew J. Gipson

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