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6 Attorney for Plaintiff
7 Cross Innovations, LLC

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF NEW YORK**

10
11
12 CROSS INNOVATIONS, LLC,

13 Plaintiff,

14 v.

15 GWEN JEWELL and
16 CAROLINE TUDOR,

17 Defendants.
18

Case No. 1:23-cv-05168

COMPLAINT

JURY TRIAL DEMANDED
(PLAINTIFF DEMANDS A JURY TRIAL FOR ALL CLAIMS SO TRIABLE)

19
20 Plaintiff, Cross Innovations, LLC, by and through its undersigned attorney, as and
21 for its Complaint against Gwen Jewell and Caroline Tudor, alleges as follows:

22 **BACKGROUND**

- 23 1. Plaintiff Cross Innovations, LLC (“Plaintiff” or “Cross Innovations”) is a limited
24 liability company organized and existing under the laws of the State of Wyoming.
25 2. Cross Innovations creates and sells medical products under the LUNDERG brand,
26 including the LUNDERG Bedsore Pillow on Amazon.com and Walmart.com (hereinafter
27 the “Accused Product”). See, e.g., <https://www.amazon.com/dp/B09R4Z6N7C>.

1 3. Upon information and belief, Defendant Gwen Aliene Jewell (“Ms. Jewell”) is a
2 natural person residing in the State of California.

3 4. Upon information and belief, Defendant Caroline Tudor (“Ms. Tudor”) is a natural
4 person residing in the State of California.

5 5. Upon information and belief, Defendants Ms. Jewell and Ms. Tudor do business
6 under the trade name of “Jewell Nursing Solutions”.

7 6. Upon information and belief, Defendants Ms. Jewell and Ms. Tudor sell the Bedsore
8 Rescue Wedge Pillow product on Amazon.com and elsewhere. See, e.g.,
9 <https://www.amazon.com//dp/B07S6HGO3V>; <https://www.amazon.com//dp/B01DZER4Z6>;
10 and [https://jewellnursingsolutions.com/product/bedsore-rescue-positioning-wedge-cushion-](https://jewellnursingsolutions.com/product/bedsore-rescue-positioning-wedge-cushion-for-medical-with-non-skid-bottom/)
11 [for-medical-with-non-skid-bottom/](https://jewellnursingsolutions.com/product/bedsore-rescue-positioning-wedge-cushion-for-medical-with-non-skid-bottom/).

12 7. According to public USPTO records, Ms. Jewell is listed as the inventor and current
13 owner of U.S. Design Patent No. D815,859 (the “Asserted Design Patent”).

14 8. On or about May 25, 2023, Ms. Tudor submitted a complaint to Amazon.com,
15 wherein she alleged that she was co-owner of the Asserted Design Patent and contended that
16 the Accused Product infringed upon the Asserted Design Patent.

17 9. In the May 25, 2023 complaint to Amazon.com, Ms. Tudor contended that the
18 Accused Product infringed upon the Asserted Design Patent because the Accused Product
19 allegedly:

- 20 (i) “has a general bowl or kidney bean-like shape”;
21 (ii) “has radially extending, curved limbs”;
22 (iii) “has a concave or shallow bowl region between the limbs”; and
23 (iv) “increases in thickness from the concave side to the flat side”.

24
25 10. In response to Ms. Tudor’s May 25, 2023 complaint filed with Amazon, Amazon.com
26 deactivated the product page for the Accused Product and prevented further sale of the
27 Accused Product on Amazon.com from May 25, 2023 to June 15, 2023.

1 11. There was no basis in law or fact to assert that the Asserted Design Patent is valid
2 and infringed by the Accused Product.

3 12. Ms. Tudor and Ms. Jewell were legally and factually incorrect to assert that the
4 LUNDERG Bedsore Pillow infringes upon the Asserted Design Patent for at least the reasons
5 that follow.

6 13. Ms. Tudor unlawfully maintained her Amazon.com complaint against Cross
7 Innovations with actual notice of invalidity and non-infringement.

8 14. Ms. Tudor's complaint with Amazon.com has deprived Plaintiff of sales, caused
9 product ranking and customer loss, harmed Plaintiff's goodwill, and damaged Plaintiff's
10 relationship with Amazon.com.

11 15. Defendants' actions have required Cross Innovations to file this action to seek final
12 court resolution of the dispute between the parties.

13 **JURISDICTION AND VENUE**

14 16. This Court has subject matter jurisdiction pursuant to at least 28 U.S.C. §§ 1331,
15 1338, and 1367.

16 17. This court has personal jurisdiction over the Defendants. Defendants have
17 purposefully availed themselves of the benefits of this forum. Defendants have intentionally
18 established regular distribution channels whereby they advertise and sell products to
19 individuals located in this district. Defendants' regular distribution channels include
20 appointing Amazon.com as a distributor of Defendants' products in this state. Defendants
21 have initiated patent enforcement activities in this district. Specifically, Defendants have
22 enlisted Amazon.com to remove Plaintiff's product page and prevent Plaintiff's products
23 from being sold to consumers in this district. Amazon.com has honored Defendants' request
24 to remove Plaintiff's products from being sold on Amazon.com. Upon information and
25 belief, Amazon.com has acted on Defendants' request by and through Amazon.com, Inc.
26 and/or its affiliates, which are believed to be registered to conduct business in this district,
27 with headquarters and other places of business located in this district.

28 18. Venue is proper in this judicial district pursuant to at least 28 U.S.C. § 1391(b).

DEFENDANTS’ ACTIVITIES

19. “In 2011 while working for Dignity Health’s Sequoia Hospital, Gwen volunteered to join her employer’s Hospital Acquired Pressure Ulcer Prevention Team (HAPU). She joined after caring for a patient with a very bad, and ultimately fatal, pressure injury.” <https://jewelnursingsolutions.com/about/>.

20. According to Defendants Ms. Jewell and Ms. Tudor, they began working together under the tradename of “Jewell Nursing Solutions” in 2011 or 2012. <https://jewelnursingsolutions.com/about/>; <https://www.linkedin.com/in/carolinetudor/>.

21. Ms. Jewell touts in product advertising materials that she has been “taking the pressure off patients and caregivers since 2012”. https://jewelnursingsolutions.com/wp-content/uploads/2022/04/Brochure-About-The-Bedsores-Rescue-Cushion-rev-2022-03_31.pdf.

22. Upon information and belief, in or about 2012, Ms. Jewel created a support cushion in substantially the same form as shown below:



23. From 2012 to 2014, Ms. Jewell publicly disclosed her support cushion to hospitals, manufacturers, contest organizers, seamstresses, fabric suppliers, and foam cutters. See, e.g.:

- a. <https://www.healthcareers.com/career-resources/industry-news/nurse-entrepreneurs-prove-they-can-dream-it-and-do-it> (“It’s been a steady but

1 rewarding climb for Jewell, who spent a few years showing her product to
2 hospitals, but to no avail. She spent another two years finding a manufacturer,
3 even entering a few entrepreneurial contests”).

4 b. <https://nursepreneurs.com/floating-in-space/> at 8:58-9:21 (“I, uh, Craigslist found
5 people to help me sew ... a lot of people started the project and weren’t interested
6 in production.”).

7 c. <https://nursepreneurs.com/floating-in-space/> at 9:32-9:50 (“I was bringing the
8 foam, I was buying the foam from one place, cut it, or have it, there’s a way to
9 make a little like cookie cutter for foam, and have them cut several pieces, and I
10 would drive it over to a seamstress who would sew it up.”)

11 d. <https://nursepreneurs.com/floating-in-space/> at 10:09-10:16 (“I had to take the
12 fabric to get it cut in bulk and take the whole package over to the seamstress and
13 have them sew it.”)

14 24. Upon information and belief, Defendants’ support cushion is currently manufactured
15 by Kipper Designs, LLC, who runs an antique furniture store and does business as
16 “California Look” at 4843 W. Jefferson Blvd, Los Angeles, CA 90016.

17 25. Upon information and belief, Defendants’ product has been referred to throughout
18 the years by several names, including the “Backbone Turning Wedge” or “Bedsore Rescue
19 Cushion”.

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**COUNT I
DECLARATORY JUDGMENT
INVALIDITY OF U.S. DESIGN PATENT NO. D815,859**

26. Plaintiff incorporates by reference in their entirety each of the allegations set forth in paragraphs 1-25 and 69-85 of this Complaint.

Prior Art – 35 U.S.C. §§ 102 and/or 103

27. U.S. Patent No. 6,944,898 discloses the following:

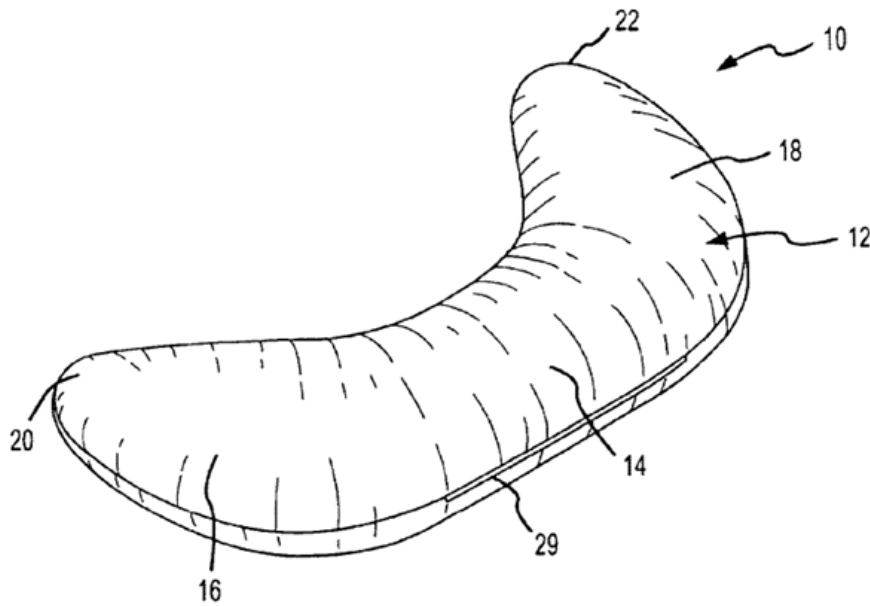
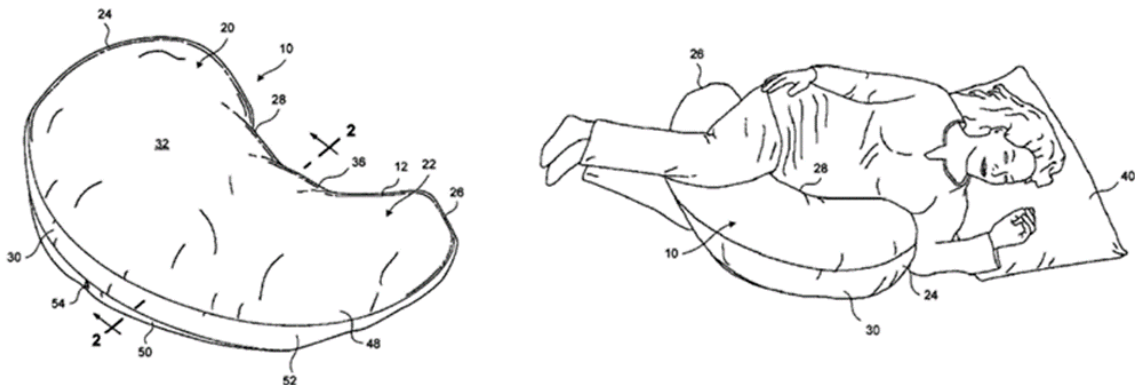


FIG.1

28. U.S. Patent No. 7,055,196 discloses the following:



29. U.S. Patent No. 7,240,384 discloses the following:

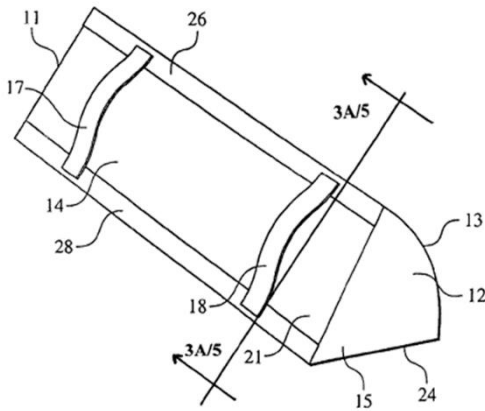


FIG. 2

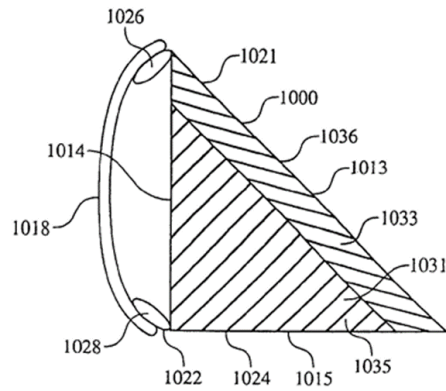


FIG. 9

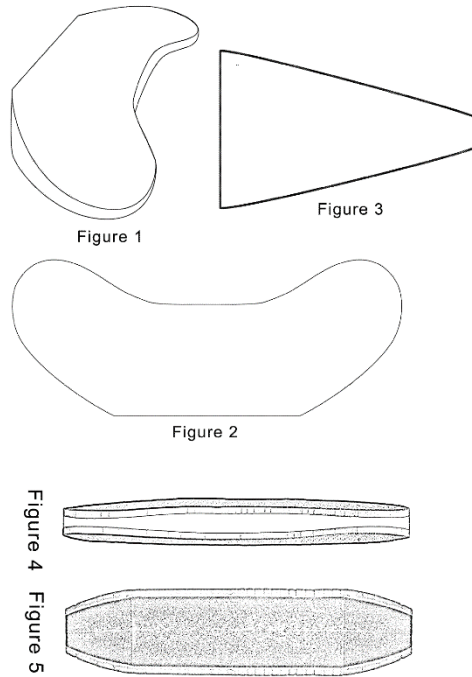
30. Ms. Jewell has publicly explained that she publicly disclosed her final design to many people (foam dealers, seamstresses, potential hospital customers, manufacturers, contest hosts, etc.) prior to filing the application for the Asserted Design Patent. See Paragraph 23.

31. As best understood, the Asserted Design Patent is anticipated under 35 U.S.C. § 102 and/or rendered obvious under 35 U.S.C. § 103 by at least (i) U.S. Patent No. 6,944,898; (ii) U.S. Patent No. 7,055,196; (iii) U.S. Patent No. 7,240,384; (iv) Ms. Jewell's product that was publicly disclosed between 2012 and 2014; or (vi) a combination of two or more of the foregoing or other prior art.

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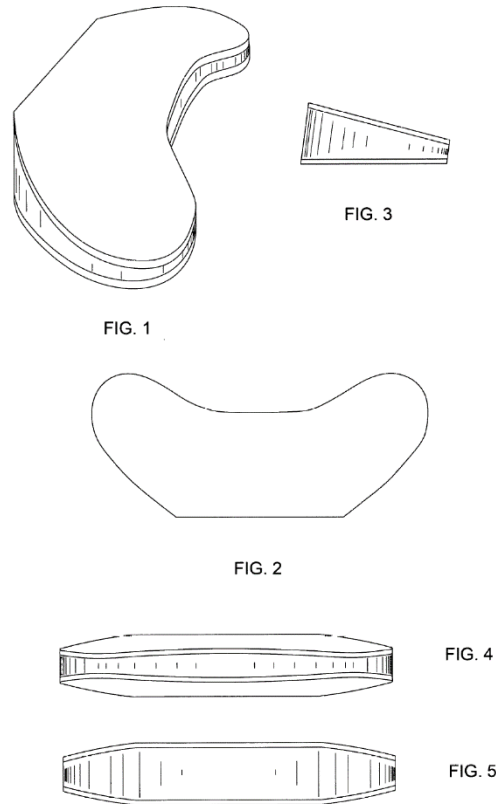
1 **35 U.S.C. §§ 112 & 132**

2 32. At the filing of the Asserted Design Patent, Ms. Jewell presented the following
3 drawings:



14 33. The drawings were rejected by the USPTO due to inconsistencies.

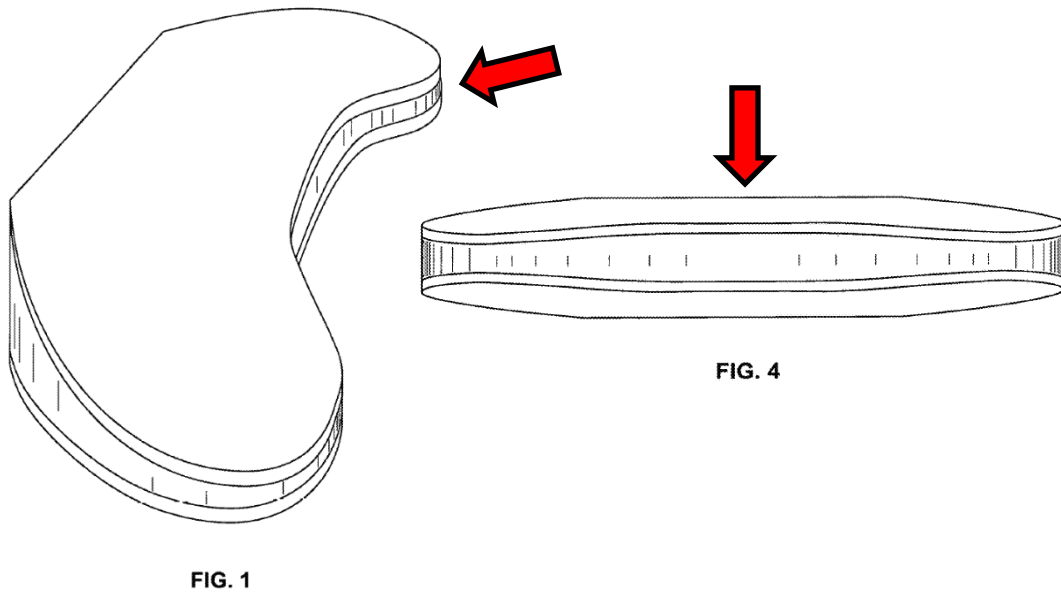
15 34. In response, during prosecution of the Asserted Design Patent, Ms. Jewell submitted
16 the following drawings:



1 35. The Asserted Design Patent is invalid under 35 U.S.C. §§ 112 & 132 for failing to
2 provide support in the original disclosure for the claimed design and for introducing new
3 matter during prosecution of the Asserted Design Patent.

4 36. The Asserted Design Patent is indefinite and invalid under 35 U.S.C. § 112 for failing
5 to provide all required views of the patented item. Specifically, the Asserted Design Patent
6 lacks a bottom view and one of the side views.

7 37. The Asserted Design Patent is also indefinite and invalid under 35 U.S.C. § 112
8 because the patented drawings set forth inconsistent designs, making it impossible for one to
9 determine the attempted patent scope. For example, Figure 1 illustrates that the ends are
10 thicker than the middle, while Figure 4 contradictorily indicates that the middle is almost
11 twice as thick as the end:



22 **35 U.S.C. § 171**

23 38. For infringement of a design patent, the patentee "must establish that an ordinary
24 person would be deceived by reason of the common features in the claimed and accused
25 designs which are ornamental." Read Corp. v. Portec, Inc., 970 F.2d 816, 825 (Fed. Cir.
26 1992). It is the patent owner's burden to establish that the allegedly infringed features are
27 non-functional because a design patent protects only the ornamental, non-functional aspects
28

1 of a product. Lee v. Dayton-Hudson Corp., 838 F.2d 1186, 1188-89 (Fed. Cir. 1988); 35
 2 U.S.C. § 171(a).

3 39. By her complaint of infringement to Amazon.com, Ms. Tudor confused the difference
 4 between a utility patent and a design patent. Specifically, Ms. Tudor seeks to enforce
 5 potential design patent protection against functional aspects of a product. Each of the four
 6 allegedly infringed features set forth in Paragraph 9 above are not ornamental, and are instead
 7 functional, as explained by Ms. Jewell’s own statements as follows. For at least this reason,
 8 the Asserted Design Patent seeks to patent primarily functional aspects of the product and is
 9 therefore invalid. Power Controls Corp. v. Hybrinetics, Inc., 806 F.2d 234, 238 (Fed.Cir.
 10 1986) (“If the patented design is primarily functional rather than ornamental, the patent is
 11 invalid.”).

12 40. As Ms. Jewel explains generally, “[t]he curvatures of The Bedsores Rescue™ fit the
 13 curvatures of your person’s body.” [https://jewellnursingsolutions.com/faqs-about-the-](https://jewellnursingsolutions.com/faqs-about-the-bedsores-rescue-cushion/)
 14 [bedsores-rescue-cushion/](https://jewellnursingsolutions.com/faqs-about-the-bedsores-rescue-cushion/). “The Bedsores Rescue cushion can achieve this balanced lift because
 15 of the patented curve and dual-angle, full-torso length design. It provides full support
 16 underneath the back and pelvis for a more accurate angled turn and cradled support. Creates
 17 long lasting comfort and better pressure relief.” [https://jewellnursingsolutions.com/wp-](https://jewellnursingsolutions.com/wp-content/uploads/2022/04/How-To-Stop-Bedsores_22.pdf)
 18 [content/uploads/2022/04/How-To-Stop-Bedsores_22.pdf](https://jewellnursingsolutions.com/wp-content/uploads/2022/04/How-To-Stop-Bedsores_22.pdf); see also
 19 [https://jewellnursingsolutions.com/wp-content/uploads/2022/04/Brochure-About-The-](https://jewellnursingsolutions.com/wp-content/uploads/2022/04/Brochure-About-The-Bedsores-Rescue-Cushion-rev-2022-03_31.pdf)
 20 [Bedsores-Rescue-Cushion-rev-2022-03_31.pdf](https://jewellnursingsolutions.com/wp-content/uploads/2022/04/Brochure-About-The-Bedsores-Rescue-Cushion-rev-2022-03_31.pdf):

FEATURES	BENEFITS
Patented Crescent Shape	<ul style="list-style-type: none"> » Lift from scapula and buttocks » Circumvents bony prominences » Rotate wedge to avoid wounds » Accommodates the natural curvatures » Flexible during head of bed elevation reduces slipping
Patented Bilateral Angle Design	<ul style="list-style-type: none"> » Isosceles triangle wedge shape fits under the back for more effective lift » Support is stable because patients rest on top of the wedge » Can be placed bilaterally for support & offload in supine position » Better pressure reduction

1 (i) *“has a general bowl or kidney bean-like shape”*

2 41. Ms. Jewell has explained on numerous occasions that the shape of the product,
3 referred to as a “bowl”, “kidney bean”, “contouring” or “crescent” shape, is functional to
4 support the user’s body without touching bony prominences where bedsores commonly form,
5 e.g.:

6 (i) “First of all, the Backbone is the only cushion designed with this patented
7 crescent shape and dual angle, gradual design. These two elements are critical
8 because they work together to support the person in a cradle-like fit and comfort
9 under the person’s back with a fully distributed support but no touching across the
10 wounded areas. Now the reason the crescent shape works so much better is that these
11 ‘tips’ here, if you will, actually lift from under the scapula and the buttocks, so you
12 get an even lift across the whole back and the pelvis in perfect alignment. Now, since
13 the center is actually thicker than the tips, the back can rest on top of this cushion,
14 but this crescent-shaped area will actually work around the spine. In this image, you
15 can see how the Backbone can be placed to avoid the entire spine, sacrum, and
16 coccyx, where many pressure injuries occur. The dual angle is more effective because
17 it is even on both sides and it is much more low profile than a typical wedge, as you
18 can see, this is a 30-degree lateral wedge. ... The crescent shape is lifting under the
19 shoulders and the hips, so the person is cradled and fits on top of the wedge. Add
20 these features together and you get better pressure reduction and well-distributed
21 support for better blood flow and more stability. The final, most important thing is,
22 more comfort.” <https://vimeo.com/686475094> (1:53-4:54) (also available at
23 <https://www.youtube.com/watch?v=3Mit2NM6un8>) (entitled “About Products for
24 Pressure Injury Prevention – The science behind the Bedsores Rescue cushion
25 design”).

26 (ii) “The Bedsores Rescue™ is specially contoured to accommodate the natural
27 curvatures of the back, providing a cradle-like support across the entire back and
28 buttocks while circumventing the sacral area.”

1 <https://jewelnursingsolutions.com/the-science-behind-the-wedge-shape/> (entitled
2 “Why The Crescent Shape?”).

3 (iii) “you can place the top part of the cushion under the scapula here and the round
4 under the buttocks. Notice how the wedge will support the buttocks area but the
5 contouring will actually be away from the sensitive sacral coccyx area and actually
6 away from the whole spine.” <https://vimeo.com/683694375> at 3:23-3:40.



14 (iv) “it is designed to circumvent, it supports on the scapula and buttocks and
15 circumvents the bony prominences ... the sacrum and tailbone.”
16 <https://www.youtube.com/watch?v=w2zhCiPjypo> at 3:53-4:01.

17 (v) “This patented crescent shape is why the Bedsore Rescue Positioning cushion
18 can lift both the back and hips simultaneously while at the same time circumventing
19 the sacrum, coccyx and spine. Making it the only cushion that can provide even
20 comfortable support across the entire torso while floating all the bony prominences
21 of the spine.” <https://jewelnursingsolutions.com/bedsore-rescue/>

22 ***b. “has radially extending, curved limbs”***

23 42. Ms. Jewell has also publicly explained on numerous occasions that her “patented
24 unique design” includes “rounded” “limbs”, “tips”, or “ends”, which are functional to contact
25 and support the user’s body parts, namely the scapula and buttocks, e.g.:

26 (i) “The Bedscore Rescue Positioning Wedge is the only 30-degree lateral
27 positioning cushion with low-profile, bilateral angles and a convex curvature with
28

1 rounded ends. This patented unique design makes the Bedsores Rescue cushion the
2 only turning wedge capable of providing full support *under* the back *and* hips while
3 circumventing sacrum/coccyx and spine.”

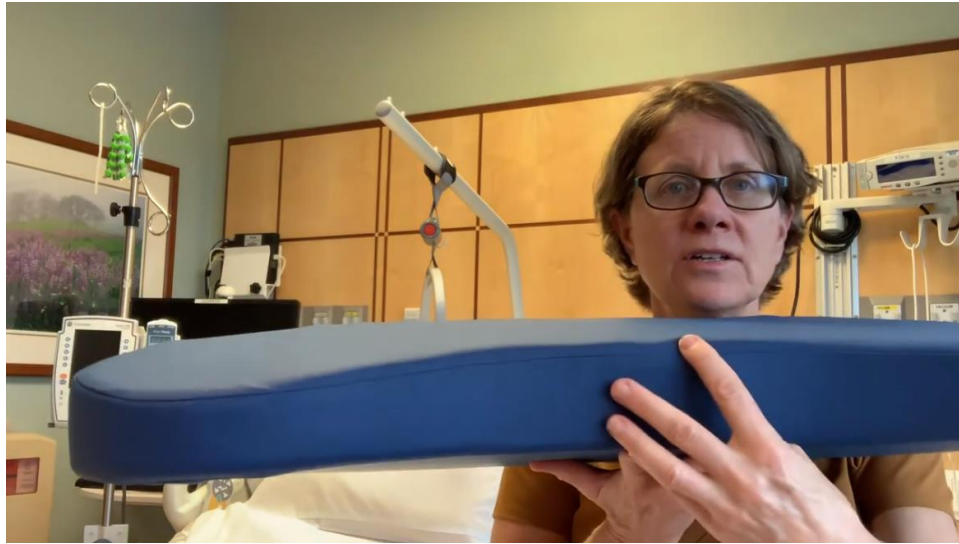
4 [https://jewelnursingsolutions.com/product/bedsores-rescue-positioning-wedge-](https://jewelnursingsolutions.com/product/bedsores-rescue-positioning-wedge-cushion-for-medical-with-non-skid-bottom/)
5 [cushion-for-medical-with-non-skid-bottom/](https://jewelnursingsolutions.com/product/bedsores-rescue-positioning-wedge-cushion-for-medical-with-non-skid-bottom/)

6 (ii) “The Bedsores Rescue Cushion® is the only positioning cushion that is curved
7 so that the patented “lift tips” can provide lift while conforming to the natural
8 curvature of the back. It makes it possible to support under the scapula and buttocks
9 without touching the sensitive bones of the spinal column, especially the
10 sacrum/coccyx.” [https://jewelnursingsolutions.com/faqs-about-the-bedsores-rescue-](https://jewelnursingsolutions.com/faqs-about-the-bedsores-rescue-cushion/)
11 [cushion/](https://jewelnursingsolutions.com/faqs-about-the-bedsores-rescue-cushion/)

12 (iii) “Now the reason the crescent shape works so much better is that these ‘tips’
13 here, if you will, actually lift from under the scapula and the buttocks, so you get an
14 even lift across the whole back and the pelvis in perfect alignment.”
15 <https://vimeo.com/686475094> (2:26-2:42) (also available at
16 <https://www.youtube.com/watch?v=3Mit2NM6un8>) (entitled “About Products for
17 Pressure Injury Prevention – The science behind the Bedsores Rescue cushion
18 design”).

19 ***c. “has a concave or shallow bowl region between the limbs”***

20 43. Ms. Jewell further explains that, in her product and the patent, “since the center is
21 actually thicker than the tips, the back can rest on top of this cushion, but this crescent-shaped
22 area will actually work around the spine. ...” <https://vimeo.com/686475094> (2:44-2:47) (also
23 available at <https://www.youtube.com/watch?v=3Mit2NM6un8>) (entitled “About Products
24 for Pressure Injury Prevention – The science behind the Bedsores Rescue cushion design”).
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d. “increases in thickness from the concave side to the flat side”

44. Ms. Jewell has also explained that the increasing thickness is present to permit the wedge to slide under the patient, e.g.:

(i) “my wedge is actually a lower profile wedge so that it goes under the person, so that they fit, the person is laying on top of it ... ergonomically, you’re getting full support, without, but also, you’re ... the cushion is fitting under the person.”

<https://nursepreneurs.com/floating-in-space/> at 18:35-19:12.

(ii) “Our Original Bedsore Rescue Turning Wedge is patented with bilaterally symmetrical angles, and contoured edges provide superior stability and control. The only one of its kind, this ergonomically correct support fits under the back and hips. It prevents spinal twisting and provides a better lift off the sacrum/tailbone area.”

<https://www.amazon.com/dp/B01DZER4Z6>

(iii) “But what makes The Bedsore Rescue™ the most unique positioning wedge in the world is the patent pending bilateral angles. That means that 2 of the 3 sides of the wedge are the same. Why is that important? Because it makes The Bedsore Rescue™ the only positioning wedge that can support under the back and buttocks, instead of to the side.” <https://jewellnursingsolutions.com/the-science-behind-the-wedge-shape/>

1 (iv) “The Bedsore Rescue Wedge Cushion triangle is a patented isosceles triangle.
2 That means two of the three sides have the same angle. All other 30 degree lateral
3 support cushions have three angles: One 90 degrees, one is 60 degrees, and one is 30
4 degrees. ... By making two of the three angles the same (aka Bilateral angles) The
5 Bedsore Rescue Cushion can fit under the person. The full support and the fact that a
6 person’s back is not completely flat, they are supported at a near exact 30 degree
7 angle, even though the two angles are only 20 degrees each.”
8 <https://jewelnursingsolutions.com/faqs-about-the-bedsore-rescue-cushion/>

9 (v) “The reason that the dual angle works so much better is that it allows you to
10 get the cushion full under the patient and all the way across the top flat surface, so
11 your person is laying on top of the cushion rather than to the side of the cushion. In
12 this illustration, we can see how the dual angle and lower profile Backbone can fit all
13 the way under a person’s back to provide a more effective and comfortable lift,
14 whereas the pillow on the lower left is too flat to get the 30 degree lift and the typical
15 wedge cut to 30 degrees actually pushes from the side, so there is not full support
16 under the back – the person may be forced too far over on their side or can easily slip
17 back onto their bedsore. The crescent shape is lifting under the shoulders and the hips,
18 so the person is cradled and fits on top of the wedge. Add these features together and
19 you get better pressure reduction and well-distributed support for better blood flow
20 and more stability. The final, most important thing is, more comfort.”
21 <https://vimeo.com/686475094> (3:42-4:54) (also available at
22 <https://www.youtube.com/watch?v=3Mit2NM6un8>) (entitled “About Products for
23 Pressure Injury Prevention – The science behind the Bedsore Rescue cushion
24 design”).

25 ***Conclusion***

26 45. Based on at least the above, Plaintiff is entitled to a declaratory judgment that U.S.
27 Patent No. 11,642,205 is invalid under at least 35 U.S.C. §§ 102, 103, 112, & 171.
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1 46. Based on at least the facts set forth herein, Plaintiff is also entitled to a declaration
2 that this case is exceptional under 35 U.S.C. § 285, with an award of reasonable attorney fees
3 to Plaintiff.

4 **COUNT II**
5 **DECLARATORY JUDGMENT**
6 **NON-INFRINGEMENT OF U.S. DESIGN PATENT NO. D815,859**

7 47. Plaintiff incorporates by reference in their entirety each of the allegations set forth in
8 paragraphs 1-46 of this Complaint.

9 48. Commil USA, LLC v. Cisco Sys., Inc., 575 U.S. 632, 644 (2015) ("[I]f . . . an act that
10 would have been an infringement . . . pertains to a patent that is shown to be invalid, there is
11 no patent to be infringed.").

12 49. Because the Asserted Design Patent is invalid, Plaintiff is entitled to a declaratory
13 judgment that the Accused Product cannot infringe the Asserted Design Patent.

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50. The Asserted Design Patent discloses five figures, annotated as follows:

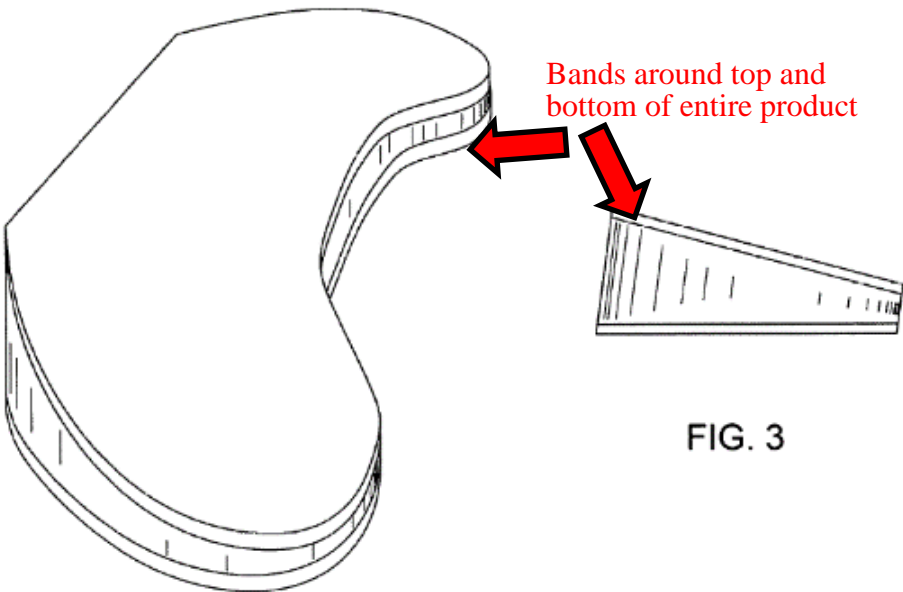


FIG. 3

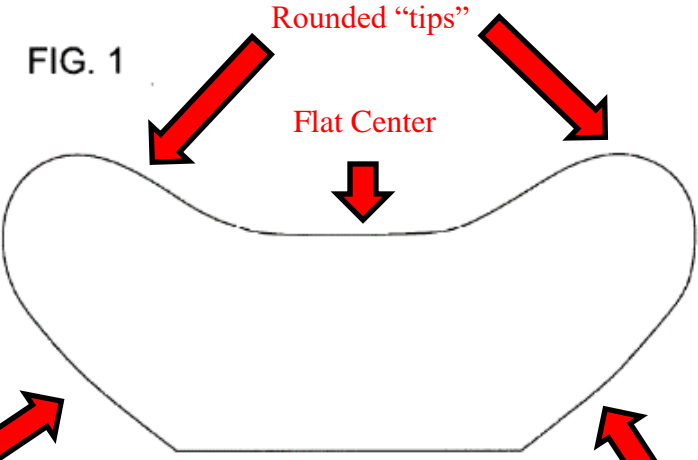


FIG. 1

Rounded "tips"

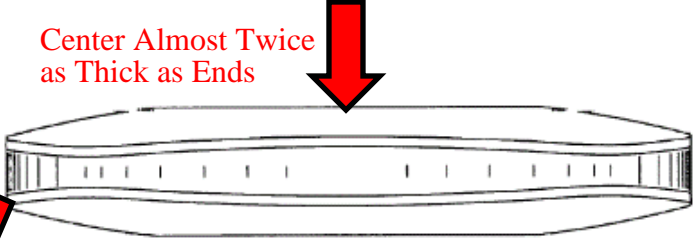
Flat Center

Rounded tapering

Back is half of product length

Rounded tapering

FIG. 2



Center Almost Twice as Thick as Ends

FIG. 4

Bands around top and bottom of entire product

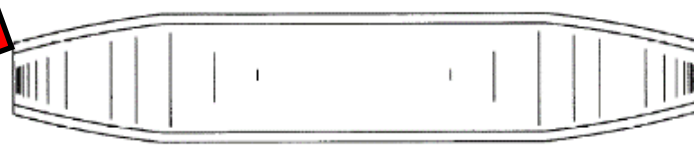
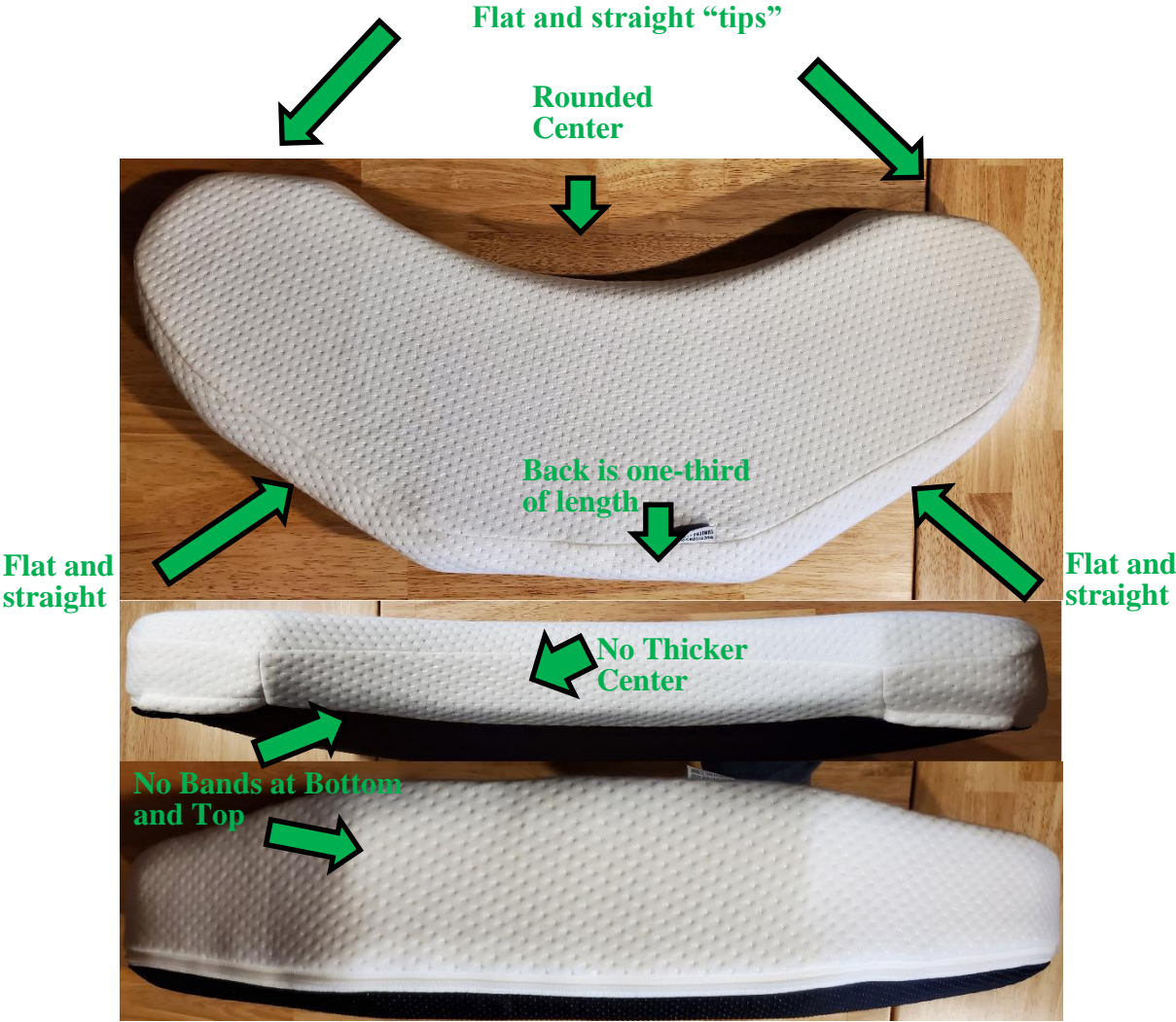


FIG. 5

1 51. As the Asserted Design Patent can be best understood, the Accused Product is not
2 infringing upon the Asserted Design Patent, at least because it does not have the features
3 shown in the Asserted Design Patent:



1 52. Based on at least the above, Plaintiff is entitled to a declaratory judgment that the
2 Accused Product does not infringe the Asserted Design Patent.

3 53. Based on at least the facts set forth herein, Plaintiff is also entitled to a declaration
4 that this case is exceptional under 35 U.S.C. § 285, with an award of reasonable attorney fees
5 to Plaintiff.

6 **COUNT III**
7 **DECLARATORY JUDGMENT**
8 **UNENFORCEABILITY OF U.S. DESIGN PATENT NO. D815,859**

9 54. Plaintiff incorporates by reference in their entirety each of the allegations set forth in
10 paragraphs 1-53 of this Complaint.

11 55. Pursuant to 37 C.F.R. § 1.56, during prosecution of the Asserted Design Patent, Ms.
12 Jewell had a duty to disclose to the USPTO information material to patentability.

13 56. Ms. Jewell is familiar with several devices in the field of the Asserted Design Patent.

14 57. By way of example, Ms. Jewell cut from an existing product to devise her product.

15 58. During prosecution of the Asserted Design Patent, Ms. Jewell did not make any
16 submissions of prior art or submit any Information Disclosure Statement.

17 59. Ms. Jewell did not disclose any prior art to the USPTO, including (1) the fact that she
18 cut a prior art product to make her product and (2) had made her product publicly known
19 since as early as 2012.

20 60. The USPTO would not have allowed the Asserted Design Patent if Ms. Jewell had
21 disclosed prior art known to her or the fact that she was publicly disclosing her product since
22 as early as 2012. The undisclosed prior art, including Ms. Jewell's publicly disclosed
23 product, renders the Asserted Design Patent anticipated or obvious alone and in combination
24 with other prior art. Ms. Jewell thus committed inequitable conduct during prosecution of
25 the Asserted Design Patent and the Asserted Design Patent is unenforceable due to said
26 inequitable conduct.

27 61. Based on at least the above, Plaintiff is entitled to a declaratory judgment that the
28 Asserted Design Patent is unenforceable due to inequitable conduct.

1 62. Based on at least the facts set forth herein, Plaintiff is also entitled to a declaration
2 that this case is exceptional under 35 U.S.C. § 285, with an award of reasonable attorney fees
3 to Plaintiff.

4 **COUNT IV**
5 **TORTIOUS INTERFERENCE**

6 63. Plaintiff incorporates by reference in their entirety each of the allegations set forth in
7 paragraphs 1-62 and 69-90 of this Complaint.

8 64. Plaintiff has a business relationship with Amazon.com.

9 65. The Defendants knew of Plaintiff's business relationship and intentionally interfered
10 with it, including by filing the May 25, 2023 complaint of alleged infringement of the
11 Asserted Design Patent with Amazon.com.

12 66. Because Defendants have secured the Asserted Design Patent through inequitable
13 conduct and have used the Asserted Design Patent dishonestly, the Defendants have acted
14 with malice and used improper and unfair means to interfere with Plaintiff's relationship with
15 Amazon.com.

16 67. Defendants' interference has caused injury to Plaintiff's relationship with
17 Amazon.com, as Amazon.com deactivated Plaintiff's product page and issued negative
18 account health notifications to Plaintiff.

19 68. Plaintiff is entitled to damages and injunctive relief to remedy and prevent
20 Defendants' further tortious interference.

21
22 **COUNT V**
23 **FALSE ADVERTISING AND UNFAIR COMPETITION**
24 **15 U.S.C. § 1125(a)**

25 69. Plaintiff incorporates by reference in their entirety each of the allegations set forth in
26 paragraphs 1-68 of this Complaint.

27 70. False statements of patent infringement or patent protection made in bad faith amount
28 to unfair competition under 15 U.S.C. § 1125(a).

71. "[A] design patent is not a substitute for a utility patent." Lee, 838 F.2d at 1189.

1 72. “Obviously, if the patentee knows that the patent is invalid, unenforceable, or not
2 infringed, yet represents to the marketplace that a competitor is infringing the patent, a clear
3 case of bad faith representations is made out.” Zenith Electronics Corp. v. Exzec, Inc., 182
4 F. 3d 1340, 1354 (Fed. Cir. 1999).

5 73. Given that Ms. Jewell has separately obtained a utility patent on a different product
6 (i.e. U.S. Patent No. 9,161,870), one would expect that she understands the difference
7 between a utility and a design patent.

8 74. Furthermore, during prosecution of the Asserted Design Patent, Ms. Jewell was
9 informed by the USPTO at least as early as August 10, 2016 that “[t]he functional and/or
10 structural features are of no concern in design cases, and are neither permitted nor required.
11 Function and structure fall under the realm of utility patent applications.”

12 75. Upon information and belief, Ms. Tudor submitted the complaint of design patent
13 infringement to Amazon.com with actual knowledge and notice of the Asserted Design
14 Patent’s inapplicability, invalidity, unenforceability, and non-infringement.

15 76. Even if Ms. Tudor’s complaint was submitted in good faith and was an honest
16 misunderstanding, bad faith is present at least with the maintenance of the Amazon.com
17 complaint after Ms. Tudor had actual notice of the inapplicability, invalidity,
18 unenforceability, and non-infringement of the Asserted Design Patent.

19 77. Despite that neither Ms. Jewell nor Ms. Tudor own a utility patent, Ms. Jewell
20 continues to advertise that her product is covered by a utility patent. See, e.g.,
21 <https://www.amazon.com/dp/B01DZER4Z6> (“The patented unique design makes the
22 Bedsore Rescue cushion the only turning wedge capable of providing full support under the
23 back and hips while circumventing the sacrum/coccyx and spine.”); see also
24 <https://jewellnursingsolutions.com/bedsore-rescue/> (“The magic behind the Bedsore Rescue
25 Positioning Cushion is in the shape. Form follows function. The contouring and angles are
26 carefully crafted to provide everything a person needs to achieve comfortable and stable
27 support without pressure.”).

28

78. In a further apparent effort to disregard the truth, Ms. Jewell has made scientifically unsupported marketing and advertising statements. For example:

a. Ms. Jewell contends that “[t]he angle of the Bedsore Rescue Cushion supports an accurate 30-degree angle. Just enough to lift off the sacrum/coccyx but not so far that there is pressure on the shoulder or greater trochanter” (https://jewellnursingsolutions.com/wp-content/uploads/2022/04/Brochure-About-The-Bedsore-Rescue-Cushion-rev-2022-03_31.pdf), despite that at least her own analysis shows to the contrary. See, e.g., Jewell, G., “Pressures to Bony Prominences in Lateral Turned Position – Comparison of Pressure Reduction Achieved by Support Device Used”, National Pressure Injury Advisory Panel (“NPUAP”) (2018):

2 Pillows		BackBone Wedge	
Average of all Pressures	19.4mmHg	Average of all Pressures	17.4mmHg
Sacral Pressure	24mmHg	Sacral Pressure	3mmHg
Trochanter Pressure	25mmHg	Trochanter Pressure	31mmHg
Angle at Chest	<30 ^o	Angle at Chest	>30 ^o
Angle at Pelvis	15 ^o	Angle at Pelvis	15 ^o
Comfort Level	3	Comfort Level	4

b. Ms. Jewell contends that “The Bedsore Rescue cushion has the highest satisfaction rate and best reviews compared to all other positioning wedge cushions in this category” (<https://jewellnursingsolutions.com/wp-content/uploads/2022/04/FAQs-rev3-04.10.22.pdf>), despite that:

- i. As of the filing of this action, the Bedsore Rescue Wedge Pillow has a rating of 4.3 stars on Amazon.com and is ranked #66 in Bed Wedges and Body Positioners. <https://www.amazon.com/dp/B01DZER4Z6>; and
- ii. The rating and ranking of the “Bedsore Rescue Wedge Pillow for Bed Sore Prevention” is equal to or worse than a standard wedge. See, e.g., <https://www.amazon.com/dp/B07F1VWRR3> (rating of 4.3 stars and ranked #24 in Bed Wedges & Body Positioners).

1 c. Ms. Jewell contends that her product is “[t]he only 30-degree lateral positioning
2 wedge that can relieve pressure in the supine position. (using 2)”
3 ([https://jewellnursingsolutions.com/wp-content/uploads/2022/03/The-Bedsores-
5 Rescue-Cushion-Product-Specifications-rev-2022-03_20.pdf](https://jewellnursingsolutions.com/wp-content/uploads/2022/03/The-Bedsores-
4 Rescue-Cushion-Product-Specifications-rev-2022-03_20.pdf))



11 despite that there are many such wedges, e.g.,
12 <https://www.performancehealth.com/amfile/file/download/file/816/product/130860/>



19 79. Defendants’ statements are literally false or false by necessary implication.

20 80. Defendants statements are likely to mislead and confuse consumers.

21 81. At least as set forth herein, Defendants have made false and misleading statements,
22 all in an attempt to increase the volume of sales and lend credence to the notion that
23 Defendants’ products are superior and exclusive when compared to the products of others.

24 82. Defendants’ actions and omissions have caused Plaintiff injury, including through
25 harm to its goodwill and reputation, and through diversion and prevention of potential sales.

26 83. Plaintiff does not have a fully adequate remedy at law.

27 84. The public interest weighs in favor of an injunction against false advertising and
28 unfair competition, and in favor of consumer protection.

1 85. Defendants' statements and actions rise to the level of "exceptional" under 15 U.S.C.
2 § 1117(a) and justify that Plaintiff be awarded its attorney's fees and treble damages.

3
4 **DEMAND FOR RELIEF SOUGHT**

5 WHEREFORE, PLAINTIFF respectfully requests the following relief:

- 6 A. That the Court declare that U.S. Design Patent No. D815,859 is invalid;
- 7 B. That the Court declare that Plaintiff has not infringed U.S. Design Patent No
8 D815,859;
- 9 C. That the Court declare that U.S. Design Patent No. D815,859 is unenforceable due to
10 inequitable conduct;
- 11 D. That the Court find that Defendants have committed tortious interference, false
12 advertising, and unfair competition;
- 13 E. That the Court award to Plaintiff all damages recoverable under the law;
- 14 F. That the Court find that this case is "exceptional" within the meaning of at least 15
15 U.S.C. § 1117(a) and 35 U.S.C. § 285, and award reasonable attorney's fees, up to
16 treble damages, and expenses to Plaintiff; and
- 17 G. That the Court award to the Plaintiff such further relief, in law or in equity, as this
18 Court deems just and proper.

19 **JURY DEMAND**

20 Pursuant to Fed. R. Civ. P. 38, Plaintiff Cross Innovations, LLC demands a trial by
21 jury on all issues properly so triable.

22 Respectfully submitted,

23 DATED: June 19, 2023

24 By: /s/ Daniel S. Bretzius
Daniel S. Bretzius, Esq.
(*Pro Hac Vice forthcoming*)
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25
26
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