

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA**

DK SOLUTIONS, LTD., a Delaware
corporation, and
DAVID G. KENT, an individual,

Plaintiffs,

vs.

PECI FLOTATION, LLC, a Virginia
corporation, and FIRST SPEAR, LLC, a
Missouri Corporation,

Defendants.

3:16cv773

CASE NO. _____

**COMPLAINT FOR PATENT
INFRINGEMENT**

[Jury Trial Demanded]

Plaintiffs DK Solutions, Ltd. ("DK") and David G. Kent make the following allegations against Defendants PECI Flotation, LLC ("PECI") and First Spear, LLC ("First Spear") (collectively "Defendants") for infringement of U.S. Patent Nos. 7,335,078 and 8,808,048 (the "Patents-in-Suit") and breach of contract.

THE NATURE OF THE ACTION

1. This is a patent infringement and breach of contract suit arising out of Defendants' willful breach of contract and willful infringement of Plaintiffs' Patents-in-Suit relating to tactical floatation devices and tactical vests containing floatation devices.

PARTIES

2. Plaintiff Kent is a former United States Navy Seal. During Mr. Kent's time in active service in the military, he identified various needs for equipment that could be used by military personnel to increase their safety during various missions and allow them to perform their missions in a more effective manner. Prior to leaving the military, Mr. Kent formed DK and has been designing and developing various technologies to help keep soldiers safe and make them more effective in the line of duty.

3. Mr. Kent is a resident of 135 Vashti Dr., Morehead City, North Carolina 28557.

4. DK Solutions, Ltd. is a Delaware corporation (owned by Mr. Kent) and its principal place of business is at 135 Vashti Dr., Morehead City, North Carolina 28557.

5. On information and belief, PECI is a Virginia corporation with its principal place of business at 817 Virginia Beach Blvd Suite 101 Virginia Beach VA 23451.

6. On information and belief, First Spear, LLC is a Missouri corporation with its principal place of business at 2015 Corporate 44 Drive, Fenton, MO 63026.

JURISDICTION AND VENUE

7. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

8. This Court also has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(2), because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between a citizen of Virginia (*i.e.*, PECI having a principal place of business in Virginia Beach, Virginia), a citizen of Missouri (First Spear, LLC), and an individual and corporation having their residence in North Carolina and principal place of business in North Carolina (Kent and DK respectively).

9. This Court has personal jurisdiction over PECI at least because PECI is based in this jurisdiction and it has availed itself of the rights and benefits of Virginia and this forum by engaging in substantial business activities herein. This includes, but is not limited to, PECI placing infringing products into the stream of commerce, via an established distribution channel, with the knowledge and/or understanding that such products are sold in the State of Virginia, including in this District. Upon information and belief, PECI has derived substantial revenues from its infringing acts occurring within the State of Virginia and within this District.

10. In addition, PECI has, and continues to, knowingly induce infringement within this District by advertising, marketing, offering for sale and/or selling infringing products to consumers, customers, resellers, partners, and/or end users, and providing instructions, user manuals, advertising, and/or marketing materials that facilitate, direct, or encourage infringement

with knowledge thereof.

11. In addition, PEI has, and continues to, knowingly contributorily infringe within this District at least because it has offered to sell, sold, or imported components or parts (e.g., inflatable bladders) with knowledge that they constitute a material part of the inventions claimed in the '048 Patent and/or are especially made or adapted for use by others, including First Spear, to infringe the '048 Patent, and are not staple articles or commodities suitable for substantial non-infringing uses.

12. This Court has personal jurisdiction over First Spear at least because First Spear has availed itself of the rights and benefits of Virginia and this forum by engaging in substantial business activities herein. This includes, but is not limited to, First Spear placing infringing products into the stream of commerce, via an established distribution channel, with the knowledge and/or understanding that such products are sold and/or offered for sale in the State of Virginia, including in this District.

13. In addition, First Spear has, and continues to, knowingly induce infringement within this District by advertising, marketing, offering for sale and/or selling infringing products to consumers, customers, resellers, partners, and/or end users, and providing instructions, user manuals, advertising, and/or marketing materials that facilitate, direct, or encourage infringement with knowledge thereof.

14. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) at least because a substantial part of the events or omissions giving rise to the claims occurred within this District. Venue is also proper in this district under 28 U.S.C. § 1400(b) at least because PEI resides and has a regular and established place of business in this District and has committed acts of infringement within this District.

15. Venue is proper in this District with respect to First Spear at least pursuant to 35 U.S.C. §§ 1391(c) and/or 1400(b). On information and belief, First Spear is deemed to reside in this District, and has purposefully transacted business involving the accused products in this District.

PATENTS-IN-SUIT AND FACTUAL BACKGROUND

16. On February 26, 2008, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,335,078 (“the ‘078 Patent”), entitled “Tactical Floatation Support System,” to inventor and Plaintiff Kent. DK is the assignee of and the rightful owner of the ‘078 Patent, a true copy of which is attached hereto as Exhibit 1. The ‘078 Patent claims priority to a provisional patent application filed on November 24, 2003.

17. The ‘078 Patent, at a high level, covers a floatation device comprising a container holding a bladder, an inflation means for inflating the bladder, a closure means for closing the container, an actuation means for releasing the closure means, and a retaining means for attaching the container to a user or inanimate object.

18. After the invention of the subject matter of the ‘078 Patent by Kent, PEI expressed an interest to Kent and DK in manufacturing and licensing the invention.

19. On April 9, 2004, PEI and DK entered into a “License Agreement” (the “Agreement”). As part of the Agreement, PEI obtained in part an exclusive license to make, use, sell, import, have made, copy, distribute, create derivative works under the intellectual property rights of Kent and DK (including patent and copyrights).

20. In exchange for the exclusive license to the various intellectual property rights under the Agreement, PEI agreed to pay DK 40% of the Net Sales of all Licensed Products sold under the Agreement.

21. The last payment PEI made to DK under the Agreement was on December 23, 2015. Yet, on information and belief, PEI continues to make, sell, offer for sale, and/or use, products covered by one or more claims of the ‘078 Patent and has continued to do so from at least December 23, 2015 to the present.

22. The Agreement provides that payments are due under the Agreement on the last days of January, April, July, and October. The Agreement also provides that “[i]f no amount is accrued during any quarterly period, a written statement to that effect shall be furnished.” No payment or statement regarding no amount due has been received by DK or Kent since January 2016.

23. The Agreement states that “[i]n the event of a dispute between the parties that must be resolved by litigation, then the prevailing party shall be entitled to receive reimbursement for all associated reasonable costs and expenses including, without limitation, attorney’s fees.”

24. On August 19, 2014, the United States Patent and Trademark Office duly and legally issued United States Patent No. 8,808,048 (“the ‘048 Patent”), entitled “Tactical Floatation Safety System,” to inventor and Plaintiff Kent. A true copy of the ‘048 Patent is attached hereto as Exhibit 2. The ‘048 Patent claims priority to a provisional patent application filed on May 10, 2011.

25. The ‘048 Patent, at a high level, covers a tactical vest to be worn around the torso of a user comprising a front panel, a rear panel, shoulder straps, first and second side panels containing housings for inflatable bladders and a source of compressed gas to be used to inflate the bladders.

DEFENDANTS’ INFRINGING ACTIVITIES

26. Upon information and belief, PEI is, and has been, engaged in the business of manufacturing, and/or having manufactured, selling, and/or offering to sell in the United States, and/or importing into the United States, devices infringing one or more claims of the Patents-in-Suit, including, but not limited to, Claim 1 of the ‘078 Patent and Claim 1 of the ‘048 Patent.

27. The accused products include, but are not limited to, PEI product numbers: TFSS-5326 and AFS-1000 and First Spear’s Paraclete Maritime Security Floatation Armor System (“MSFAS”) and Maritime Assault products (collectively, the “Accused Devices”). The Accused Devices that are covered by at least Claim 1 of the ‘078 Patent are: TFSS-5326 / AFS-

1000 (“the ‘078 Accused Devices”) and the Accused Products that are covered by at least Claim 1 of the ‘048 Patent are: MSFAS and Maritime Assault (“the ‘048 Accused Devices”).

28. On information and belief, each of the ‘078 Accused Devices has been sold or offered for sale within this judicial district, through distribution channels, including, but not limited to, PECO’s principal place of business at 817 Virginia Beach Blvd suite 101 Virginia Beach VA 23451 and its website at <http://www.tacfloat.com>

29. On information and belief, each of the ‘048 Accused Devices has been sold or offered for sale within this judicial district, through established distribution channels including but not limited to First Spear’s website at <http://www.first-spear.com>.

30. Upon information and belief, PECO and First Spear purposefully direct sales and offers for sale of the Accused Devices, including those specifically identified above, toward the State of Virginia, including this District.

31. Upon information and belief, PECO and First Spear maintain established distribution channels within the United States that permit PECO and First Spear to ship the Accused Devices, including those specifically identified above, to and from the State of Virginia, including this District.

32. On information and belief, PECO and First Spear sell and offer to sell the Accused Devices to persons, entities, and/or corporations other than the United States Government.

33. On information and belief, PECO sells and offers to sell the ‘078 Accused Devices to First Spear, LLC.

34. On information and belief, PECO sells and offers to sell to First Spear components or parts (e.g., inflatable bladders) for the ‘048 Accused Devices. On information and belief the components or parts (e.g., inflatable bladders) sold to First Spear have no substantial non-infringing use.

**FIRST CAUSE OF ACTION
(INFRINGEMENT OF U.S. PATENT NO. 7,335,078)**

35. Plaintiffs repeat and incorporate by reference each and every allegation of paragraphs 1-34 of this Complaint, as though fully set forth herein.

36. Since PEGI's breach of the Agreement, DK is the sole owner of the entire right, title, and interest in and to the '078 Patent, including the right to sue and recover for any and all infringements thereof.

37. PEGI is directly infringing, either literally or through the doctrine of equivalents, the '078 Patent by making, using, selling, and/or offering to sell within the United States, and/or importing into the United States, the '078 Accused Devices, which practice one or more claims of the '078 Patent, including, but not limited to, Claim 1 in violation of 35 U.S.C. § 271.

38. For example, Claim 1 is directed towards a floatation device. Claim 1 includes several components that must be present in an infringing product, including an air impermeable bladder, an inflation means for inflating the bladder, a container attached to the bladder that is designed to hold the bladder and the inflation means, a closure means for closing the container that contains at least one loop, a grommet through which the loop may extend, and a retaining means for temporarily retaining the loop when extended through the grommet. An infringing product must also contain an actuation means for releasing the closure means and an attachment means for attaching the container to the user or inanimate object. Upon information and belief, the '078 Accused Devices embody the claimed invention, without limitation, by providing an apparatus containing each of the components/elements identified in Claim 1 of the '078 Patent, either literally or under the doctrine of equivalents.

39. On information and belief, the '078 Accused Devices contain at least an air impermeable bladder satisfying at least that element of Claim 1 of the '078 Patent. For instance, the accused TFSS-5326 and AFS-1000 systems include a "welded floatation bladder" that "is a reusable welded fabric enclosure that deploys under the arm and is readily collapsed and stowed for future use." For instance, the following is an excerpt from

<http://www.tacfloat.com/products/tfss-5326>:

Each TFSS-5326 system consists of one each independent left and right hand units, which can be mounted on a belt. Each unit includes a welded flotation bladder, an inflation system, a pouch closure system, a pouch, and a firing handle. The bladder is a reusable welded fabric enclosure that deploys under the arm and is readily collapsed and stowed for future use. The inflation system utilizes a manually actuated CO2 cartridge for primary inflation and an oral inflation tube for secondary inflation.

For instance, the following is an excerpt from <http://www.tacfloat.com/products/afs-1000>:

Each AFS-1000 system consists of one each independent left and right hand units, which can be mounted on a belt. Each unit includes a welded flotation bladder, an inflation system, a pouch closure system, a pouch, and a firing handle. The bladder is a reusable welded fabric enclosure that deploys under the arm and is readily collapsed and stowed for future use. The inflation system utilizes a manually actuated CO2 cartridge for primary inflation and an oral inflation tube for secondary inflation.

40. On information and belief, the '078 Accused Devices contain inflation means for inflating the bladder, including but not limited to a compressed air canister, satisfying at least that element of Claim 1 of the '078 Patent. For instance, the accused TFSS-5326 and AFS-1000 systems include "an inflation system" which "utilizes an auto-actuated CO2 cartridge for primary inflation and an oral inflation tube for secondary inflation." For instance, the following is an excerpt from <http://www.tacfloat.com/products/tfss-5326>:

Each TFSS-5326 system consists of one each independent left and right hand units, which can be mounted on a belt. Each unit includes a welded flotation bladder, an inflation system, a pouch closure system, a pouch, and a firing handle. The bladder is a reusable welded fabric enclosure that deploys under the arm and is readily collapsed and stowed for future use. The inflation system utilizes a manually actuated CO2 cartridge for primary inflation and an oral inflation tube for secondary inflation.

For instance, the following is an excerpt from <http://www.tacfloat.com/products/afs-1000>:

Each AFS-1000 system consists of one each independent left and right hand units, which can be mounted on a belt. Each unit includes a welded flotation bladder, an inflation system, a pouch closure system, a pouch, and a firing handle. The bladder is a reusable welded fabric enclosure that deploys under the arm and is readily collapsed and stowed for future use. The inflation system utilizes a manually actuated CO2 cartridge for primary inflation and an oral inflation tube for secondary inflation.

41. On information and belief, the '078 Accused Devices include a container that is connected to the bladder designed to hold the bladder and the inflation means, satisfying that element of Claim 1 of the '078 Patent. For instance, the accused TFSS-5326 and AFS-1000 systems include a "pouch" which "contains and protects the bladder, inflation system, and closure system." For instance, the following is an excerpt from <http://www.tacfloat.com/products/tfss-5326>:

Each TFSS-5326 system consists of one each independent left and right hand units, which can be mounted on a belt. Each unit includes a welded flotation bladder, an inflation system, a pouch closure system, a pouch, and a firing handle. The bladder is a reusable welded fabric enclosure that deploys under the arm and is readily collapsed and stowed for future use. The inflation system utilizes a manually actuated CO2 cartridge for primary inflation and an oral inflation tube for secondary inflation.

The TFSS-5326 pouch uses a unique Grommet, Loop, and Pin (GLP) closure system design that combines positive closure of the pouch with space efficient packing. This method prevents accidental pouch opening and allows for the smallest unit size when fully packed (approx 6.5" x 2.75" x 2.25"). A durable cordura flap to further protect against damage and inadvertent actuation covers the entire closure mechanism.

The TFSS-5326 pouch contains and protects the bladder, inflation system, and closure system. It includes a waist belt loop and clip loops to secure the pouch to the webbing belt. The firing handle attaches to the outside of the pouch and uses color-coded beads to help distinguish left and right hand units. The handle serves to release the closure system and

For instance, the following is an excerpt from <http://www.tacfloat.com/products/afs-1000>:

Each AFS-1000 system consists of one each independent left and right hand units, which can be mounted on a belt. Each unit includes a welded flotation bladder, an inflation system, a pouch closure system, a pouch, and a firing handle. The bladder is a reusable welded fabric enclosure that deploys under the arm and is readily collapsed and stowed for future use. The inflation system utilizes a manually actuated CO2 cartridge for primary inflation and an oral inflation tube for secondary inflation.

The AFS-1000 pouch uses a unique Grommet, Loop, and Pin (GLP) closure system design that combines positive closure of the pouch with space efficient packing. This method prevents accidental pouch opening and allows for the smallest unit size when fully packed (approx 6.5" x 2.75" x 2.25"). A durable cordura flap to further protect against damage and inadvertent actuation covers the entire closure mechanism.

The AFS-1000 pouch contains and protects the bladder, inflation system, and closure system. It includes a waist belt loop and clip loops to secure the pouch to the webbing belt. The firing handle attaches to the outside of the pouch and uses color-coded beads to help distinguish left and right hand units. The handle serves to release the closure system and actuate the CO2 inflation system.

42. On information and belief, the '078 Accused Devices contain closure means for closing the container where the closing means includes a loop, a grommet through which the loop can extend, and a retaining means for temporarily restraining the loop when extended through the grommet. On information and belief each of the '078 Accused Products contain a grommet and loop assembly that satisfies at least those elements of Claim 1 of the '078 Patent. For instance, the accused TFSS-5326 and AFS-1000 systems contain a pouch which "uses a Grommet, Loop and Pin (GLP) closure system that combines positive closure of the pouch with space efficient packing." The following is an excerpt from <http://www.tacfloat.com/products/tfss-5326>:

Each TFSS-5326 system consists of one each independent left and right hand units, which can be mounted on a belt. Each unit includes a welded flotation bladder, an inflation system, a pouch closure system, a pouch, and a firing handle. The bladder is a reusable welded fabric enclosure that deploys under the arm and is readily collapsed and stowed for future use. The inflation system utilizes a manually actuated CO2 cartridge for primary inflation and an oral inflation tube for secondary inflation.

The TFSS-5326 pouch uses a unique Grommet, Loop, and Pin (GLP) closure system design that combines positive closure of the pouch with space efficient packing. This method prevents accidental pouch opening and allows for the smallest unit size when fully packed (approx 6.5" x 2.75" x 2.25"). A durable cordura flap to further protect against damage and inadvertent actuation covers the entire closure mechanism.

For instance, the following is an excerpt from <http://www.tacfloat.com/products/afs-1000>:

Each AFS-1000 system consists of one each independent left and right hand units, which can be mounted on a belt. Each unit includes a welded flotation bladder, an inflation system, a pouch closure system, a pouch, and a firing handle. The bladder is a reusable welded fabric enclosure that deploys under the arm and is readily collapsed and stowed for future use. The inflation system utilizes a manually actuated CO2 cartridge for primary inflation and an oral inflation tube for secondary inflation.

The AFS-1000 pouch uses a unique Grommet, Loop, and Pin (GLP) closure system design that combines positive closure of the pouch with space efficient packing. This method prevents accidental pouch opening and allows for the smallest unit size when fully packed (approx 6.5" x 2.75" x 2.25"). A durable cordura flap to further protect against damage and inadvertent actuation covers the entire closure mechanism.

43. On information and belief, the '078 Accused Devices contain an actuator means for releasing the closure means satisfying at least that element of Claim 1 of the '078 Patent. For instance, the accused TFSS-5326 and AFS-1000 systems contain a "firing handle" which "serves to release the closure system and actuate the CO2 inflation system." For instance, the following is an excerpt from <http://www.tacfloat.com/products/tfss-5326>:

Each TFSS-5326 system consists of one each independent left and right hand units, which can be mounted on a belt. Each unit includes a welded flotation bladder, an inflation system, a pouch closure system, a pouch, and a firing handle. The bladder is a reusable welded fabric enclosure that deploys under the arm and is readily collapsed and stowed for future use. The inflation system utilizes a manually actuated CO2 cartridge for primary inflation and an oral inflation tube for secondary inflation.

The TFSS-5326 pouch uses a unique Grommet, Loop, and Pin (GLP) closure system design that combines positive closure of the pouch with space efficient packing. This method prevents accidental pouch opening and allows for the smallest unit size when fully packed (approx 6.5" x 2.75" x 2.25"). A durable cordura flap to further protect against damage and inadvertent actuation covers the entire closure mechanism.

The TFSS-5326 pouch contains and protects the bladder, inflation system, and closure system. It includes a waist belt loop and clip loops to secure the pouch to the webbing belt. The firing handle attaches to the outside of the pouch and uses color-coded beads to help distinguish left and right hand units. The handle serves to release the closure system and actuate the CO2 inflation system.

For instance, the following is an excerpt from <http://www.tacfloat.com/products/afs-1000>:

Each AFS-1000 system consists of one each independent left and right hand units, which can be mounted on a belt. Each unit includes a welded flotation bladder, an inflation system, a pouch closure system, a pouch, and a firing handle. The bladder is a reusable welded fabric enclosure that deploys under the arm and is readily collapsed and stowed for future use. The inflation system utilizes a manually actuated CO2 cartridge for primary inflation and an oral inflation tube for secondary inflation.

The AFS-1000 pouch uses a unique Grommet, Loop, and Pin (GLP) closure system design that combines positive closure of the pouch with space efficient packing. This method prevents accidental pouch opening and allows for the smallest unit size when fully packed (approx 6.5" x 2.75" x 2.25"). A durable cordura flap to further protect against damage and inadvertent actuation covers the entire closure mechanism.

The AFS-1000 pouch contains and protects the bladder, inflation system, and closure system. It includes a waist belt loop and clip loops to secure the pouch to the webbing belt. The firing handle attaches to the outside of the pouch and uses color-coded beads to help distinguish left and right hand units. The handle serves to release the closure system and actuate the CO2 inflation system.

44. On information and belief, the '078 Accused Devices contain at least an attachment means for attaching the container to the user or inanimate object (namely a belt that can be secured around the waist of the user) satisfying at least that element of Claim 1 of the '078 Patent. For instance, the accused TFSS-5326 and AFS-1000 systems "consists of one of each independent left and right hand units, which can be mounted on a belt." The system further includes "a pouch" which includes "a waist belt loop and clip loops to secure the pouch to the webbing belt." For instance, the following is an excerpt from <http://www.tacfloat.com/products/tfss-5326>:

Each TFSS-5326 system consists of one each independent left and right hand units, which can be mounted on a belt. Each unit includes a welded flotation bladder, an inflation system, a pouch closure system, a pouch, and a firing handle. The bladder is a reusable welded fabric enclosure that deploys under the arm and is readily collapsed and stowed for future use. The inflation system utilizes a manually actuated CO2 cartridge for primary inflation and an oral inflation tube for secondary inflation.

The TFSS-5326 pouch uses a unique Grommet, Loop, and Pin (GLP) closure system design that combines positive closure of the pouch with space efficient packing. This method prevents accidental pouch opening and allows for the smallest unit size when fully packed (approx 6.5" x 2.75" x 2.25"). A durable cordura flap to further protect against damage and inadvertent actuation covers the entire closure mechanism.

The TFSS-5326 pouch contains and protects the bladder, inflation system, and closure system. It includes a waist belt loop and clip loops to secure the pouch to the webbing belt. The firing handle attaches to the outside of the pouch and uses color-coded beads to help distinguish left and right hand units. The handle serves to release the closure system and actuate the CO2 inflation system.

For instance, the following is an excerpt from <http://www.tacfloat.com/products/afs-1000>:

Each AFS-1000 system consists of one each independent left and right hand units, which can be mounted on a belt. Each unit includes a welded flotation bladder, an inflation system, a pouch closure system, a pouch, and a firing handle. The bladder is a reusable welded fabric enclosure that deploys under the arm and is readily collapsed and stowed for future use. The inflation system utilizes a manually actuated CO2 cartridge for primary inflation and an oral inflation tube for secondary inflation.

The AFS-1000 pouch uses a unique Grommet, Loop, and Pin (GLP) closure system design that combines positive closure of the pouch with space efficient packing. This method prevents accidental pouch opening and allows for the smallest unit size when fully packed (approx 6.5" x 2.75" x 2.25"). A durable cordura flap to further protect against damage and inadvertent actuation covers the entire closure mechanism.

The AFS-1000 pouch contains and protects the bladder, inflation system, and closure system. It includes a waist belt loop and clip loops to secure the pouch to the webbing belt. The firing handle attaches to the outside of the pouch and uses color-coded beads to help distinguish left and right hand units. The handle serves to release the closure system and actuate the CO2 inflation system.

45. PEI is also indirectly infringing the '078 Patent at least by virtue of its inducement of direct infringement of the '078 Patent by customers, end users, and others who use PEI's '078 Accused Devices.

46. PEGI has induced, and continues to induce, others to infringe the '078 Patent in violation of 35 U.S.C. § 271(b) by taking active steps to encourage and facilitate others' direct infringement of the '078 Patent with knowledge or willful blindness of that infringement. Upon information and belief, these affirmative acts include, without limitation, advertising, marketing, promoting, offering for sale and/or selling the above-referenced '078 Accused Devices to consumers, customers, manufacturers, distributors, resellers, partners, and/or end users, and providing instructions, user manuals, advertising, and/or marketing materials which facilitate, direct or encourage the direct infringement of the '078 Patent by others with knowledge thereof.

47. By reasons of PEGI's infringing activities, Plaintiffs have suffered, and will continue to suffer, substantial damages in an amount to be determined at trial.

48. On information and belief, PEGI has had actual notice of the '078 Patent since its issuance in February, 2008, and upon information and belief, have known or should have known that their activities described above infringe the '078 Patent directly or indirectly. PEGI has nonetheless continued to engage in their infringing acts. Accordingly, PEGI's infringement is willful and deliberate, and this case is exceptional under 35 U.S.C. § 285.

SECOND CAUSE OF ACTION
(INFRINGEMENT OF U.S. PATENT NO. 8,808,048)

49. Plaintiffs repeat and incorporate by reference each and every allegation of paragraphs 1-48 of this Complaint, as though fully set forth herein.

50. Kent is the sole owner of the entire right, title, and interest in and to the '048 Patent, including the right to sue and recover for any and all infringements thereof.

51. PEGI has contributorily infringed the '048 Patent in violation of 35 U.S.C. § 271(c) at least because it has offered to sell, sold, or imported components or parts (e.g., inflatable bladders) with knowledge that they constitute a material part of the inventions claimed in the '048 Patent and/or are especially made or adapted for use by others, including First Spear, to infringe the '048 Patent, and are not staple articles or commodities suitable for substantial non-infringing uses.

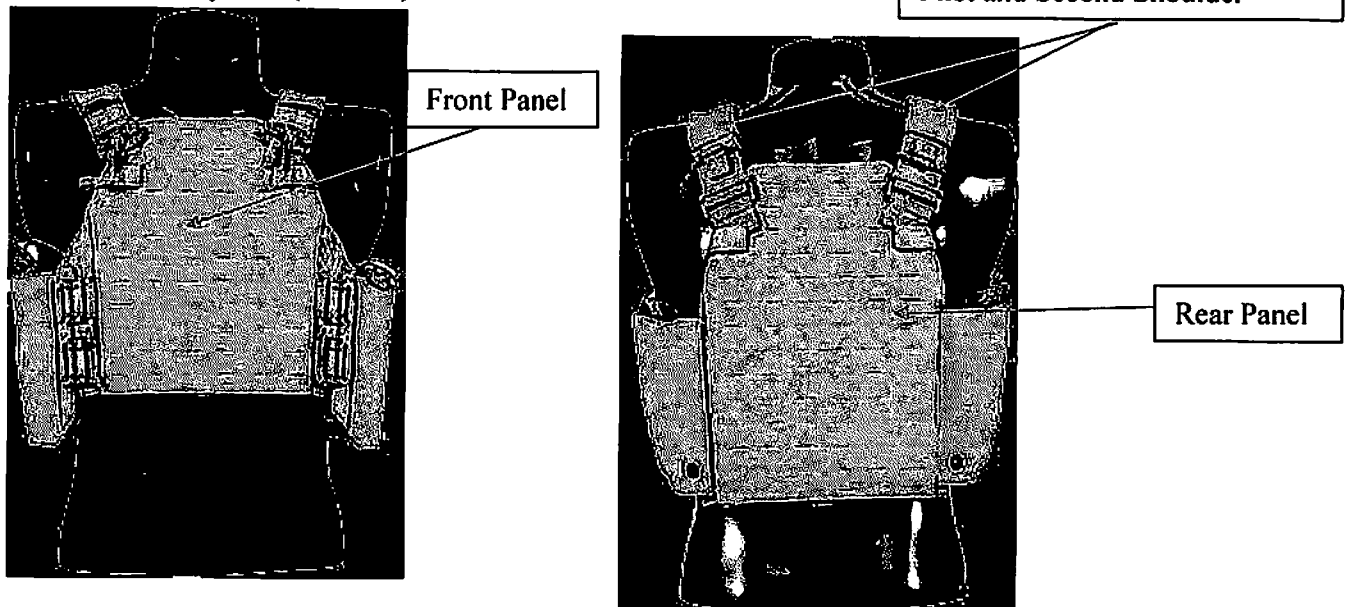
52. First Spear is directly infringing, either literally or through the doctrine of equivalents, the '048 Patent by making, using, selling, and/or offering to sell within the United States, and/or importing into the United States, the '048 Accused Devices, which practice one or more claims of the '048 Patent, including, but not limited to, Claim 1 in violation of 35 U.S.C. § 271.

53. For example, Claim 1 covers a tactical vest to be worn around the torso of a user comprising a front panel, a rear panel, first and second placed apart shoulder straps that each secure an upper end of the front panel to an upper end of the rear panel, first and second side panels that extend between the front panel and the rear panel and that define coverings that house inflatable bladders and sources of compressed gas couple to the bladders. Claim 1 also requires that actuators be coupled to each of the bladders for selectively inflating the bladders, and that the front and rear panels, side panels, and shoulder straps define openings for a user's arms. Finally, Claim 1 requires that each of the bladders have a plurality of lobes defining a cutaway region there between when the bladders are inflated that align with the user's arms when the user is donning the tactical vest when the bladders are inflated. Upon information and belief, the '048 Accused Devices embody the claimed invention, without limitation, by providing an apparatus containing each of the components/elements identified in Claim 1 of the '048 Patent, either literally or under the doctrine of equivalents.

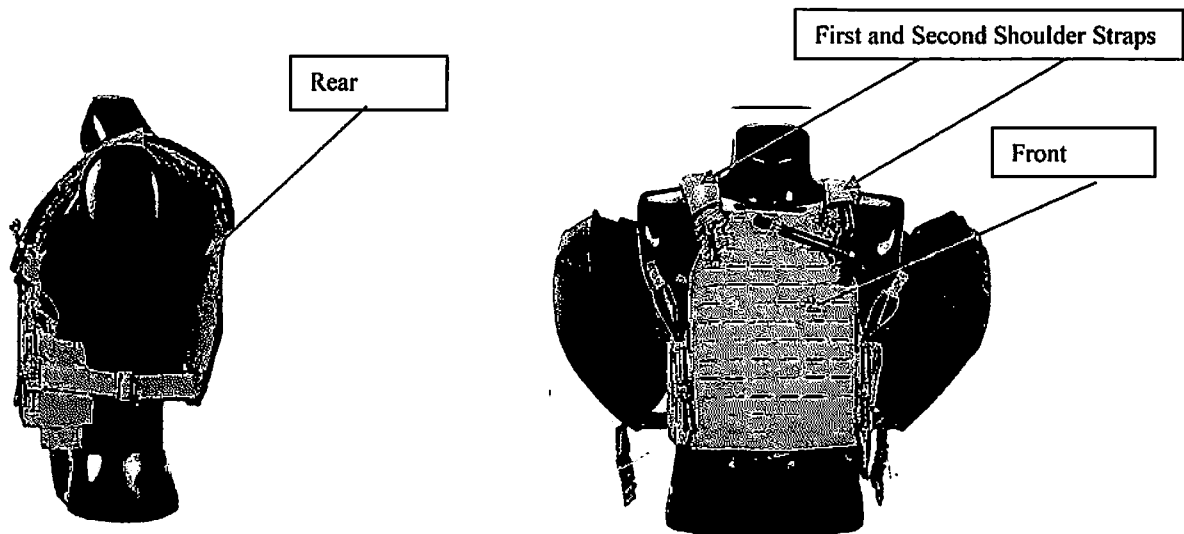
54. On information and belief, the '048 Accused Devices include a tactical vest to be worn around the torso of a user comprising a front panel, a rear panel, first and second placed apart shoulder straps that each secure an upper end of the front panel to an upper end of the rear panel, satisfying at least those elements of Claim 1 of the '048 Patent.

For instance, the following are images of the Paraclete Maritime Security Floatation

Armor System (MSFAS):



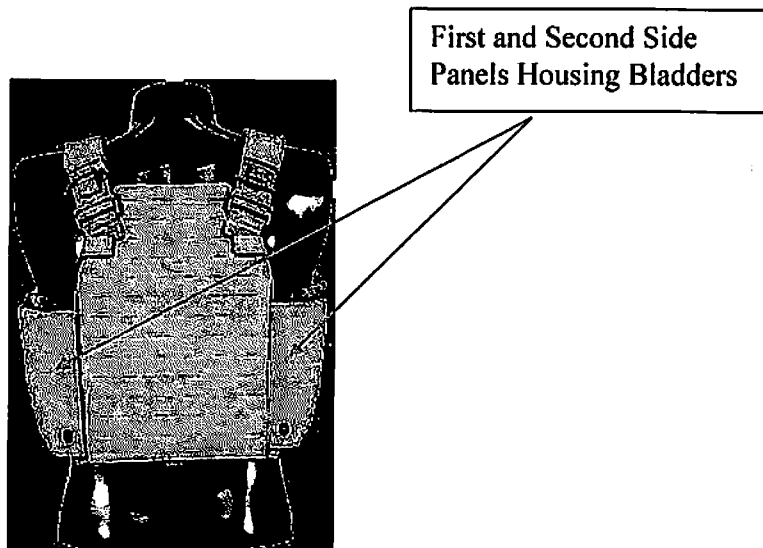
For instance, the following are images of the accused Maritime Assault product:



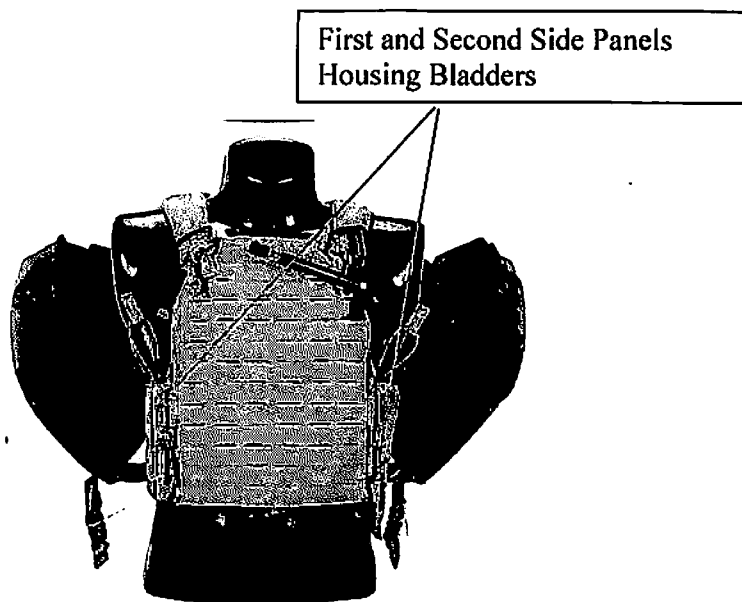
55. On information and belief, the '048 Accused Devices include first and second side panels that extend between the front panel and the rear panel and that define coverings that house inflatable bladders and sources of compressed gas coupled to the bladders, satisfying at

least those elements of Claim 1 of the '048 Patent. For instance, the accused MSFAS contains "Two manually activated Cumberbund Tactical Flotation Safe Systems (CTFSS) that are inflated by two 38 Gram CO₂'s." Similarly, the accused Maritime Assault product "includes sized floatation cumberbund[s]."

For instance, the following is an image of the accused MSFAS:



For instance, the following is an image of the accused Maritime Assault product:



56. On information and belief, the '048 Accused Devices include actuators that are coupled to each of the bladders for selectively inflating the bladders, satisfying at least those elements of Claim 1 of the '048 Patent. For instance, the MSFAS and Maritime Assault products include flotation cummerbunds that include actuators for inflating the bladders.

The following is an excerpt from the MSFAS product information sheet:

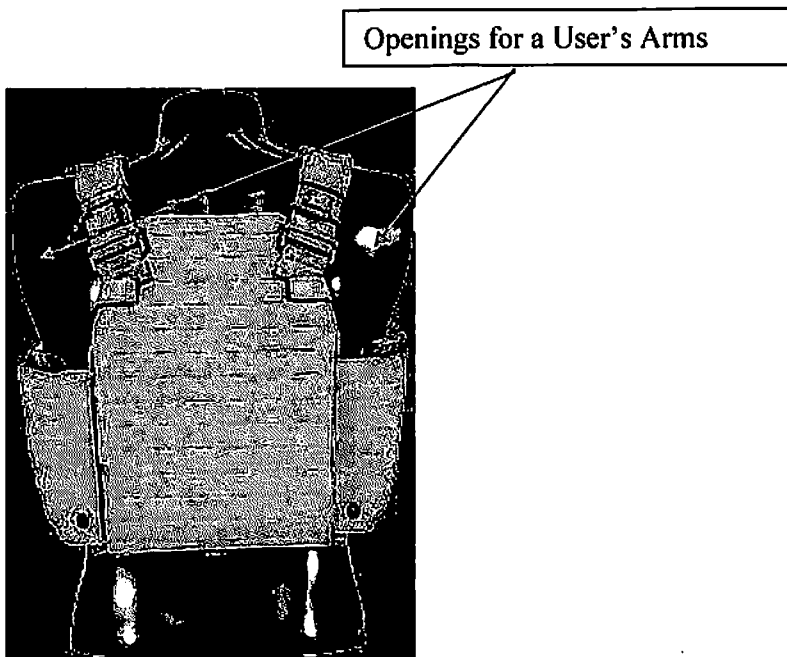
- Two manually activated Cummerbund Tactical Floatation Safety Systems (CTFSS) that are inflated by two 38 Gram CO₂'s.

The following is an excerpt from the Maritime Assault product information sheet:

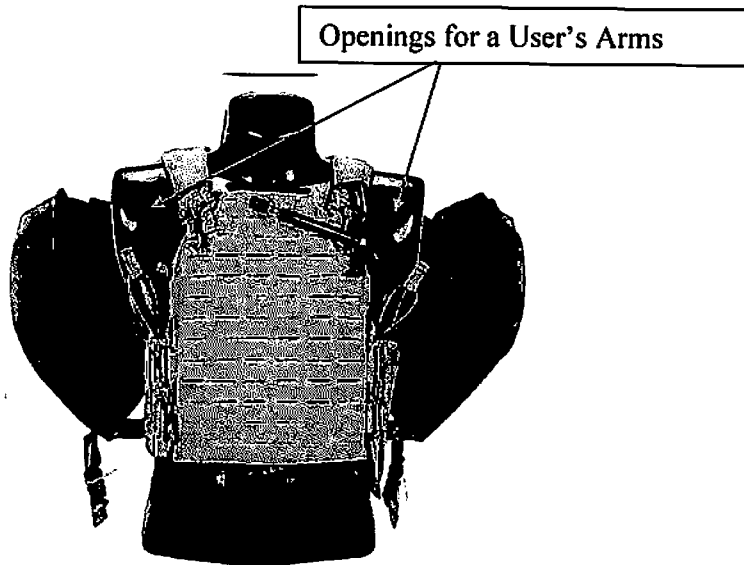
-INCLUDES SIZED FLOTATION CUMMERBUND

57. On information and belief, the '048 Accused Devices' front and rear panels, side panels, and shoulder straps define openings for a user's arms, satisfying at least those elements of Claim 1 of the '048 Patent.

For instance, the following is an image of the accused MSFAS:

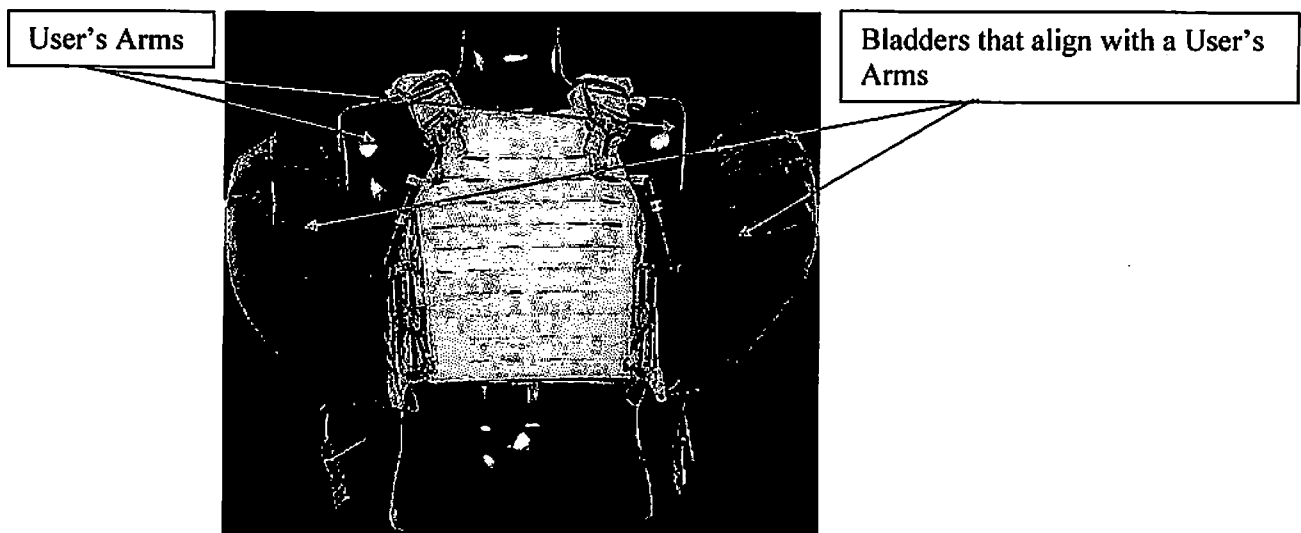


For instance, the following is an image from the accused Maritime Assault product:

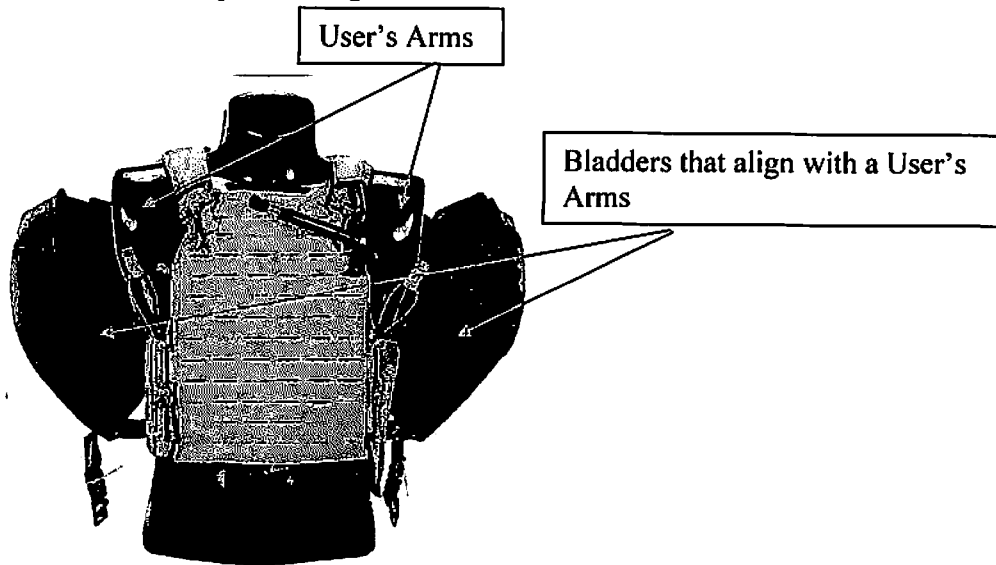


58. On information and belief, the '048 Accused Devices' bladders have a plurality of lobes defining a cutaway region there between when the bladders are inflated that align with the user's arms when the user is donning the tactical vest when the bladders are inflated, satisfying at least that element of Claim 1 of the '048 Patent.

For instance, the following is an image of the accused MSFAS:



For instance, the following is an image of the accused Maritime Assault Product:



59. First Spear is also indirectly infringing the '048 Patent at least by virtue of its inducement of direct infringement of the '048 Patent by customers, end users, and others who use First Spear's '048 Accused Devices.

60. First Spear has induced, and continues to induce, others to infringe the '048 Patent in violation of 35 U.S.C. § 271(b) by taking active steps to encourage and facilitate others' direct infringement of the '048 Patent with knowledge or willful blindness of that infringement. Upon information and belief, these affirmative acts include, without limitation, advertising, marketing, promoting, offering for sale and/or selling the above-referenced '048 Accused Devices to consumers, customers, manufacturers, distributors, resellers, partners, and/or end users, and providing instructions, user manuals, advertising, and/or marketing materials which facilitate, direct or encourage the direct infringement of the '048 Patent by others with knowledge thereof.

61. PEGI has contributed to the infringement of, and continues to contribute to the infringement of, the '048 Patent in violation of 35 U.S.C. § 271(c) by taking active steps to encourage and facilitate others' direct infringement of the '048 Patent with knowledge or willful blindness of that infringement. Upon information and belief, these affirmatives acts include,

without limitation, the sale, offer for sale, and/or importation of components or parts (e.g., inflatable bladders) with knowledge that they constitute a material part of the inventions claimed in the '048 Patent and/or are especially made or adapted for use by others, including First Spear, to infringe the '048 Patent, and are not staple articles or commodities suitable for substantial non-infringing uses.

62. By reasons of First Spear's and PECI's infringing activities, Plaintiffs have suffered, and will continue to suffer, substantial damages in an amount to be determined at trial.

63. On information and belief, First Spear and PECI have had actual notice of the '048 Patent since its issuance in August 19, 2014, and upon information and belief, have known or should have known that their activities described above infringe the '048 Patent directly or indirectly. First Spear and PECI has nonetheless continued to engage in their infringing acts. Accordingly, First Spear's and PECI's infringement is willful and deliberate, and this case is exceptional under 35 U.S.C. § 285.

**THIRD CAUSE OF ACTION
(BREACH OF CONTRACT)**

64. Plaintiffs repeat and incorporate by reference each and every allegation of paragraphs 1-63 of this Complaint, as though fully set forth herein.

65. The Agreement required PECI to make quarterly payments to DK of 40% of the Net Sales of all Licensed Products sold under the Agreement or provide DK with a written statement (due the same day as the quarterly payments) that no payment was due under the Agreement.

66. PECI has not made a payment to DK or Kent nor has it provided either of them with a statement that no payment was due under the Agreement since January 2016.

67. On information and belief, PECI has sold numerous Licensed Products (as defined under the Agreement) since January 2016, including but not limited to, PECI model nos.: TFSS-5326 and AFS-1000.

68. As such, PECI has knowingly and willfully breached the Agreement with DK.

69. By reasons of PECI's breach of contract, Plaintiffs have suffered, and will continue to suffer, substantial damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs DK and KENT respectfully request that the Court enter judgment as follows:

- A. That PECI has directly infringed and indirectly infringed the '078 Patent;
- B. That PECI has indirectly infringed the '048 Patent;
- C. That PECI has breached the contract (Agreement) between PECI and DK;
- D. That PECI be ordered to pay damages adequate to compensate DK and Kent for PECI's infringement of the Patents-in-Suit, together with prejudgment interest and post-judgment interest thereon;
- E. That PECI's infringement is deliberate and willful and that PECI be ordered to pay treble damages under 35 U.S.C. § 284;
- F. A permanent injunction enjoining PECI and its corresponding officers, agents, servants, employees, attorneys affiliates, divisions, subsidiaries, and all persons in active concert or participation with any of them, from infringing the Patents-in-Suit, and/or contributing to or inducing anyone to do the same, including manufacture, use, offer to sell, sale, and/or importation of Accused Products or components of Accused Products before expiration of the Patents-in-Suit;
- G. That First Spear has directly infringed and indirectly infringed the '048 Patent;
- H. That First Spear be ordered to pay damages adequate to compensate DK and Kent for First Spear's infringement of the '048 Patent, together with prejudgment interest and post-judgment interest thereon;
- I. That First Spear's infringement is deliberate and willful and that First Spear be ordered to pay treble damages under 35 U.S.C. § 284;
- J. A permanent injunction enjoining First Spear and its corresponding officers, agents, servants, employees, attorneys affiliates, divisions, subsidiaries, and all persons in active

concert or participation with any of them, from infringing the '048 Patent, and/or contributing to or inducing anyone to do the same, including manufacture, use, offer to sell, sale, and/or importation of Accused Products or components of Accused Products before expiration of the '048 Patent;

- K. That this is an exceptional case under 35 U.S.C. § 285 and that Plaintiffs be awarded their reasonable attorneys' fees, costs, and expenses; and
- L. That Plaintiffs be granted such other and additional relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

Dated: September 16, 2016

Respectfully submitted,

/s/ Brian C. Riopelle

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and David G. Kent***