

1 MELODY A. KRAMER, SBN 169984
2 KRAMER LAW OFFICE, INC.
3 9930 Mesa Rim Road, Suite 1600
4 San Diego, California 92121
Telephone (858) 362-3150

5 J. MICHAEL KALER, SBN 158296
6 KALER LAW OFFICES
7 9930 Mesa Rim Road, Suite 200
8 San Diego, California 92121
Telephone (858) 362-3151

9 Attorneys for Plaintiff JENS ERIK SORENSEN,
10 as Trustee of SORENSEN RESEARCH AND
11 DEVELOPMENT TRUST

12
13 UNITED STATES DISTRICT COURT
14 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
15

16 JENS ERIK SORENSEN, as Trustee of)
17 SORENSEN RESEARCH AND)
18 DEVELOPMENT TRUST,)

19 Plaintiff,)

20 v.)

21 HELEN OF TROY TEXAS)
22 CORPORATION; OXO)
23 INTERNATIONAL LTD.;)
and DOES 1 – 100,)

24 Defendants.)

25 _____)
and related counterclaims.)
26 _____)

27
28 //

Case No. 07cv2278 BTM CAB

**PLAINTIFF’S NOTICE OF NO
AMENDMENT TO COMPLAINT
AND SERVICE OF PRELIMINARY
INFRINGEMENT CONTENTIONS**

1 TO THE COURT AND ALL PARTIES AND THEIR COUNSEL:

2 Plaintiff Jens Erik Sorensen, as Trustee of Sorensen Research and
3 Development Trust, (“Plaintiff”) hereby gives notice of the following:

4 1. Plaintiff will not be filing a motion to amend Plaintiff’s First Amended
5 Complaint filed November 5, 2008 at Doc. #41 for the reasons set forth below; and

6 2. Plaintiff is serving Limited Preliminary Infringement Contentions on
7 Defendant today, setting forth Plaintiff’s infringement contentions only as to Claim 3
8 of the ‘184 patent.

9
10 The First Amended Complaint asserts infringement of the ‘184 patent claims,
11 by extension including claim 3, and Plaintiff is not required to allege with further
12 particularity each specific patent claim that is alleged to be infringed in the
13 Complaint.

14 This question was previously addressed by this Court in the related *Sorensen*
15 *v. Dorman Products, Inc.*, Case No. 09cv1579, where the infringement defendant
16 argued in a motion to dismiss that “the Complaint does not provide any factual basis
17 as to: . . . (2) which claims of the ‘184 Patent are alleged to be infringed; . . .” *Id.* at
18 Doc. #8, page 10:7-9. In denying the motion to dismiss, this Court stated:

19 The Federal Circuit, in a post-Twombly decision, stated that the
20 following allegations were sufficient to state a cause of action for patent
21 infringement: “(1) an allegation of jurisdiction; (2) a statement that the
22 plaintiff owns the patent; (3) a statement that defendant has been
23 infringing the patent by making, selling, and using [the device]
24 embodying the patent; (4) a statement that the plaintiff has given the
25 defendant notice of its infringement; and (5) a demand for an injunction
26 and damages.” McZeal v. Sprint Nextel Corp., 501 F.3d 1354, 1356–57
27 (Fed. Cir. 2007). Plaintiff has pled facts supporting each of these
28 elements, and has identified two specific products—the “Ergo Stripper”
and the “Crimper”—that allegedly infringe on Plaintiff’s ‘184 Patent.
The alleged facts are plausible, sufficiently specific, and form an
adequate basis for Plaintiff’s infringement claim. See Bender v.
Broadcom Corp., No. 09cv1147 MHP, 2009 WL 3571286, at *4 (N.D.

1 Cal. Oct. 30, 2009) (denying motion to dismiss under Twombly and
2 Iqbal standard even where complaint listed virtually all defendant's
3 products because list could include infringing products).

4 *Sorensen v. Dorman Products*, Case No. 09cv1579, Doc. #22 (Moskowitz, J.).

5 Moreover, courts have expressly held that a plaintiff is not required to plead
6 with particularity the specific patent claims that have been infringed. *Gen-Probe,*
7 *Inc. v. Amoco Corp.*, 926 F. Supp. 948, 960 (S.D.Cal. 1996); *Beery v. Hitachi Home*
8 *Elects. (America), Inc.*, 157 F.R.D. 477, 480 (C.D.Cal. 1993); *R2 Tech., Inc. v.*
9 *Intelligent Sys. Software, Inc.*, 2002 WL 31260049, at *3 (D.Del. Oct. 9, 2002); *see*
10 *also* Fed. R. Civ. P. 84, Appendix of Forms, Form 18 (complaint for patent
11 infringement).

12 Finally, the information proposed for inclusion in the complaint, that is, the
13 identity of the specific claims alleged to be infringed, is typically provided early
14 during discovery in the form of Preliminary Infringement Contentions. See Patent
15 L.R. 3.1; *see also* *WIAV Networks, LLC v. 3COM Corp.*, 2009 WL 6048922, at *3
16 (E.D.Tex. Dec. 15, 2009).

17 The First Amended Complaint in this case references "the '184 patent"
18 generally without further specification, no fewer than 21 times within the document,
19 including paragraph 24 which reads:

20 24. On information and belief, one or more Defendants continue to
21 make, use, sell and/or offer for sale within the United States and this
22 District, and import into the United States the Accused Products using
23 the '184 patent process, without authority to do so, in violation of 35
24 U.S.C. § 271, knowing such to be an infringement of the '184 patent,
25 and in wanton and willful disregard of Plaintiff's '184 patent rights.

26 Doc. #41 (emphasis added). Because the First Amended Complaint satisfies
27 pleading requirements with its allegations of infringement of the '184 Patent, no
28 further amendment is necessary.

PROOF OF SERVICE

I, Melody A. Kramer, declare: I am and was at the time of this service working within in the County of San Diego, California. I am over the age of 18 year and not a party to the within action. My business address is the Kramer Law Office, Inc., 9930 Mesa Rim Road, Suite 1600, San Diego, California, 92121.

On Tuesday, June 29, 2010, I served the following documents:

PLAINTIFF’S NOTICE OF NO AMENDMENT TO COMPLAINT AND SERVICE OF PRELIMINARY INFRINGEMENT CONTENTIONS

PERSON(S) SERVED	PARTY(IES) SERVED	METHOD OF SERVICE
Breton A. Bocchieri Erik B. Von Ziepel Christopher Larkin Seyfarth Shaw LLP 2029 Century Park East, Suite 3300 Los Angeles, CA 90067 bbocchieri@seyfarth.com evonzeipel@seyfarth.com clarkin@seyfarth.com	Helen of Troy Texas Corporation; Oxo International Ltd.	Email--Pleadings Filed with the Court via CM/ECF

- (Personal Service) I caused to be personally served in a sealed envelope hand-delivered to the office of counsel during regular business hours.
- (Federal Express) I deposited or caused to be deposited today with Federal Express in a sealed envelope containing a true copy of the foregoing documents with fees fully prepaid addressed to the above noted addressee for overnight delivery.
- (Facsimile) I caused a true copy of the foregoing documents to be transmitted by facsimile machine to the above noted addressees. The facsimile transmissions were reported as complete and without error.
- (Email) I emailed a true copy of the foregoing documents to an email address represented to be the correct email address for the above noted addressee.
- (Email--Pleadings Filed with the Court) Pursuant to Local Rules, I electronically filed this document via the CM/ECF system for the United States District Court for the Southern District of California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(U.S. Mail) I mailed a true copy of the foregoing documents to a mail address represented to be the correct mail address for the above noted addressee.

I declare that the foregoing is true and correct, and that this declaration was executed on Tuesday, June 29, 2010, in San Diego, California.

/s/ Melody A. Kramer
Melody A. Kramer