

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BABYAGE.COM, INC. et al.,	)	
	)	
Plaintiff-Counterclaim Defendants/ Third Party Defendants,	)	No. 3:07-cv-01600-ARC
	)	
v.	)	(Judge A. Richard Caputo)
	)	
LEACHCO, INC. et al.,	)	(electronically filed)
	)	
Defendant-Counterclaim Plaintiffs/ Third Party Plaintiffs.	)	

**RESPONSE TO RULE 56.1 STATEMENT**

1-2. Admitted.

3. Denied. Claim 1 has no “pertinent part.” The complete text of the claim is set out in columns 4 and 5 of the patent. Exhibit 2.

4. Admitted that the Court made the quoted ruling. It does not become “conclusive,” and remains subject to reconsideration, until a final judgment is entered.

5. Admitted that the crown is “not shaped like a semi-circle” because it has square corners at its upper contour. The balance of the allegation is denied, because the crown of the accused product has a semi-circular base. Exhibit 1, ¶ 10; Exhibit 6.

Admitted.

7-13. Denied. Exhibit 1, ¶¶ 14-19.

14-15. Denied. The Plaintiff has wrongfully withheld records and refused to cooperate in pretrial discovery aimed at testing the truth of these allegations. Exhibit 14, ¶ 2-7.

### Additional Material Facts

16. Putting aside the semi-circular crown element of claim 1, the Babyage Cozy Comfort pillow includes each of the remaining elements of claims 1, 2 and 3 of U.S. Patent No. 6,76,934. Exhibit 1, ¶ 8, Exhibits 7-10.
17. The crown of the Babyage Cozy Comfort pillow is equivalent to the semi-circular crown element of claim 1 of U.S. Patent No. 6,76,934, assuming that this element is not literally satisfied by the pillow. Exhibit 1, ¶¶ 9-13.
18. Babyage has offered for sale and sold the Cozy Comfort pillow within the United States since July 13, 2004, the issue date of U.S. Patent No. 6,76,934. Exhibit 1, ¶ 6-7, Exhibits 2-3.

Respectfully submitted,

s/ Gary Peterson  
Gary Peterson  
OK 7068  
211 N. Robinson Ave., Suite 450 South  
Oklahoma City, OK 73102  
telephone: (405) 606-3367  
fax: (866) 628-0506  
email: gp@garypeterson.com

Sean V. Kemether  
PA 70816  
Kelly Grimes Pietrangelo & Vakil, P.C.  
P.O. Box 1048  
Media, PA 19063-0848  
telephone: 610-565-2669  
fax: 610-565-0780  
email: skemether@kgpv.com

Attorneys for Defendant and Counterclaim  
Plaintiffs

CERTIFICATE OF SERVICE

I certify that I electronically transmitted this document to the Clerk using the ECF System so as to cause transmittal of a Notice of a Electronic Filing to the following ECF registrant:

Andrew J. Katsock, III

Attorney for Babyage.com, Inc. and John M. Kiefer, Jr., on October 22, 2008.

s/ Gary Peterson