IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

BALL METAL BEVERAGE CONTAINER CORP. 9300 West 108th Circle Westminster, Colorado 80021, Plaintiff, v. CROWN PACKAGING TECHNOLOGY, INC. 11535 South Central Avenue Alsip, Illinois 60803 and CROWN CORK & SEAL USA, INC. One Crown Way Philadelphia, Pennsylvania 19154, Defendants.	:	Civil Action No. 3:12-cv-0033 **DECLARATORY JUDGMENT COMPLAINT** **DEMAND FOR JURY TRIAL**

For its Complaint against Defendants Crown Packaging Technology, Inc. ("Crown Technology") and Crown Cork & Seal USA, Inc. ("Crown USA," Crown Technology and Crown USA are collectively referred to herein as "Crown"), Plaintiff Ball Metal Beverage Container Corp. ("Ball") states as follows:

THE PARTIES

1. Plaintiff Ball is a Colorado Corporation having its principal place of business at 9300 West 108th Circle, Westminster, Colorado, 80021. Ball is in the business of manufacturing and selling metal beverage can components, including can ends and can bodies.

2. Defendant Crown Technology is a Delaware corporation having a principal place of business at 11535 South Central Avenue, Alsip, Illinois 60803. Upon information and belief, Crown Technology is a research, development, and engineering company specializing in metal packaging for the beverage and food industry.

3. Defendant Crown USA is a Delaware corporation having a principal place of business at One Crown Way, Philadelphia, Pennsylvania 19154. Upon information and belief, Crown USA is in the business of manufacturing and selling metal beverage can components, including can ends and can bodies, and Crown USA manufactures and sells can ends from its plant in Dayton, Ohio.

JURISDICTION AND VENUE

4. This Complaint for declaratory relief arises under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202; the patent laws of the United States of America, 35 U.S.C. §1, *et seq.*; and the common law. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1338.

5. Venue as to these claims is proper in this Court in accordance with Crown's own allegations and statements in the Amended Complaint (dkt. 7) in Case No. 3:05cv281 on this Court's docket as well as under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b).

THE PATENTS

6. This case involves U.S. Patents Nos. 6,848,875 ("the '875 Patent," copy attached as Exhibit A) and 6,935,826 ("the '826 Patent," copy attached as Exhibit B). Upon information and belief, Crown Technology is the owner by assignment of the ‘875 and ‘826 Patents, and Crown USA is the licensee under such patents.

7. The ‘875 and ‘826 Patents (and a related patent – U.S. Patent No. 6,065,634 ("the '634 patent")) have been the subject of extensive and generally unsuccessful litigation by Crown

against Ball and the other U.S. manufacturers of beverage cans and can ends. In the first such litigation, Case No. 03-cv-137-S (W.D. Wis.), Crown accused Anheuser-Busch ("AB") and its subsidiary Metal Container Corporation ("MCC") of infringing the '634 Patent by making and selling their LOF can end. On December 11, 2003, the District Court for the Western District of Wisconsin granted summary judgment against Crown on its infringement claim and on several other causes of action. On December 23, 2004, the Federal Circuit reversed the noninfringement determination, based on a different claim construction, and remanded. On remand, the parties settled the case. To Ball's knowledge, Crown has not asserted the '634 Patent against anyone since that case because prior art located since the initiation of that litigation renders the claims of the '634 patent invalid.

8. More recently, beginning in 2005, Crown asserted the '875 Patent and the '826 Patent in separate cases against Rexam Beverage Can Company ("Rexam") and against Ball. In Case No. 05-608-MPT before the United State District Court for the District of Delaware, Crown accused Rexam's Rexam can end and the method of seaming the Rexam can end of infringing the '875 and the '826 Patents. In its decision (dkt. 370) of January 22, 2008, 531 F. Supp. 2d 629, and its final judgment (dkt. 391-2) of March 31, 2008, respectively, that court held that one of the two patent claims asserted by Crown (claim 34 of the '875 Patent) was invalid for violation of the written description requirement of 35 U.S.C. §112. Crown did not appeal that aspect of the court's decision. That court also granted summary judgment of noninfringement on the other claim asserted by Crown (claim 14 of the '826 Patent). On March 17, 2009, the Federal Circuit reversed that decision and remanded for determination of infringement under the Doctrine of Equivalents. 559 F.3d 1308 (Fed. Cir. 2009). On remand, rather than litigate that issue, Crown voluntarily dismissed that remaining infringement claim. (Dkt. 412, 418.)

9. In Case No. 3:05cv281 ("*Crown v. Ball*") on this Court's docket, Crown accused Ball's CDL+ can end and the method of seaming the CDL+ can end of infringing the '875 and the '826 Patents. In its Decision (dkt. no. 101) and Judgment (dkt. no. 102) of September 8, 2009, this Court held that all of the claims of the '875 and the '826 Patents which Crown had asserted against Ball with respect to the CDL+ can end and the method of seaming such are invalid as anticipated under 35 U.S.C. §102 and for violation of the written description requirement of 35 U.S.C. §112. On April 1, 2011, the United States Court of Appeals for the Federal Circuit reversed, finding that the asserted claims did not violate the written description requirement and finding that there were issues of fact precluding summary judgment that the asserted claims were invalid under §102. On remand, this Court then considered the portion of Ball's summary judgment motion addressing noninfringement, which this Court had not previously decided. In its Decision and Entry (dkt. no. 123) and Judgment (dkt. no. 124) of January 31, 2012, this Court held that the CDL+ end does not infringe any of the claims of the '875 or '826 Patents asserted by Crown in *Crown v. Ball*.

THE CURRENT CASE OR CONTROVERSY

10. In *Crown v. Ball*, discovery addressed the CDL+ can end which Ball was manufacturing and selling as of the filing of the complaint and during discovery in that case. After discovery closed in *Crown v. Ball*, but before this Court ruled on the noninfringement portion of Ball's summary judgment motion in that case, Ball began selling two other can ends: the CDL-W can end (which is currently used solely in the packaging and sale of beer in cans) and a modification of the CDL+ (the "New CDL+," which is manufactured using the same tooling as the original CDL+ can end but is manufactured using a modified process). Discovery in *Crown v. Ball* occurred prior to the sale of CDL-W or New CDL+ can ends. Ball's motion for summary judgment addressed the CDL+ can end which had been the subject of discovery and

litigation in *Crown v. Ball*, but it did not address the CDL-W and New CDL+ can ends. This Court's decision (dkt. no. 123) in *Crown v. Ball* held that the CDL+ can end which had been the subject of discovery and of the summary judgment motion does not infringe the asserted claims of the '875 and '826 Patents. In a supplemental submission (dkt. 121) in *Crown v. Ball*, shortly before the Court's decision, Crown suggested that Ball had sold new can ends and that Crown believes that such new can ends infringe the '875 and '826 Patents.

11. A justiciable case or controversy now exists between the parties in that Ball contends that its manufacture of CDL-W and New CDL+ can ends, its sale of such ends, the seaming of such ends, and related activity do not infringe any valid and enforceable claim of the '875 or '826 Patents, while Crown contends that such does infringe one or more valid and enforceable claims of the '875 and '826 Patents.

COUNT I

(Declaratory Judgment of Non-Infringement and/or Invalidity of the '875 Patent as to the CDL-W Can End)

12. Plaintiff incorporates by reference Paragraphs 1 through 11 above as if fully rewritten herein.

13. This Count of this Complaint is for a Declaratory Judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that no valid and enforceable claim of the '875 Patent is infringed by Ball with respect to Ball's manufacture of CDL-W can ends, the sale of such ends, the seaming of such ends, or related activities.

14. The '875 Patent is invalid for failure to comply with one or more of the provisions of 35 U.S.C. §§ 102, 103 and/or 112.

15. The CDL-W can ends which Ball manufactures, the sale of such ends, the seaming of such ends, and related activities do not infringe any valid, enforceable claim of the '875 Patent.

16. To resolve the legal and factual questions raised by Crown's conduct, and to afford relief from the uncertainty and controversy which Crown's conduct has precipitated, Ball is entitled to a declaration that Ball's manufacture of CDL-W can ends, the sale of such ends, the seaming of such ends, and related activities do not infringe any valid, enforceable claim of the '875 Patent.

COUNT II

(Declaratory Judgment of Non-Infringement and/or Invalidity of the '826 Patent as to the CDL-W Can End)

17. Ball incorporates by reference Paragraphs 1 through 16 above as if fully rewritten herein.

18. This Count of this Complaint is for a Declaratory Judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that no valid and enforceable claim of the '826 Patent is infringed by Ball with respect to Ball’s manufacture of CDL-W can ends, the sale of such ends, the seaming of such ends, and related activities.

19. The '826 Patent is invalid for failure to comply with one or more of the provisions of 35 U.S.C. §§ 102, 103 and/or 112.

20. The CDL-W can ends which Ball manufactures, the sale of such ends, the seaming of such ends, and related activities do not infringe any valid, enforceable claim of the '826 Patent.

21. To resolve the legal and factual questions raised by Crown's conduct, and to afford relief from the uncertainty and controversy which Crown's conduct has precipitated, Ball

is entitled to a declaration that Ball's manufacture of CDL-W ends, the sale of such ends, the seaming of such ends, and related activities do not infringe any valid, enforceable claim of the '826 Patent.

COUNT III

(Declaratory Judgment of Non-Infringement and/or Invalidity of the '875 Patent as to the New CDL+ Can End)

22. Ball incorporates by reference Paragraphs 1 through 21 above as if fully rewritten herein.

23. This Count of this Complaint is for a Declaratory Judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that no valid and enforceable claim of the '875 Patent is infringed by Ball with respect to Ball’s manufacture of New CDL+ can ends, the sale of such ends, the seaming of such ends, and related activities.

24. The '875 Patent is invalid for failure to comply with one or more of the provisions of 35 U.S.C. §§ 102, 103 and/or 112.

25. The New CDL+ can ends which Ball manufactures, the sale of such ends, the seaming of such ends, and related activities do not infringe any valid, enforceable claim of the '875 Patent.

26. To resolve the legal and factual questions raised by Crown's conduct, and to afford relief from the uncertainty and controversy which Crown's conduct has precipitated, Ball is entitled to a declaration that Ball's manufacture of New CDL+ ends, the sale of such ends, the seaming of such ends, and related activities do not infringe any valid, enforceable claim of the '875 Patent.

COUNT IV

(Declaratory Judgment of Non-Infringement and/or Invalidity of the '826 Patent as to the New CDL+ Can End)

27. Ball incorporates by reference Paragraphs 1 through 26 above as if fully rewritten herein.

28. This Count of this Complaint is for a Declaratory Judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that no valid and enforceable claim of the '826 Patent is infringed by Ball with respect to Ball's manufacture of New CDL+ can ends, the sale of such ends, the seaming of such ends, and related activities.

29. The '826 Patent is invalid for failure to comply with one or more of the provisions of 35 U.S.C. §§ 102, 103 and/or 112.

30. The New CDL+ can ends which Ball manufactures, the sale of such ends, the seaming of such ends, and related activities does not infringe any valid, enforceable claim of the '826 Patent.

31. To resolve the legal and factual questions raised by Crown's conduct, and to afford relief from the uncertainty and controversy which Crown's conduct has precipitated, Ball is entitled to a declaration that Ball's manufacture of New CDL+ ends, the sale of such ends, the seaming of such ends, and related activities do not infringe any valid, enforceable claim of the '826 Patent.

WHEREFORE, Plaintiff Ball Metal Beverage Container Corp. prays that this Court enter judgment:

(A) Declaring that Ball's manufacture of CDL-W can ends, the sale of such ends, the seaming of such ends, and related activity do not infringe any valid claim of U.S. Patent No. 6,848,875;

(B) Declaring that Ball's manufacture of CDL-W can ends, the sale of such ends, the seaming of such ends, and related activity do not infringe any valid claim of U.S. Patent No. 6,935,826;

(C) Declaring that Ball's manufacture of New CDL+ can ends, the sale of such ends, the seaming of such ends, and related activity do not infringe any valid claim of U.S. Patent No. 6,848,875;

(D) Declaring that Ball's manufacture of New CDL+ can ends, the sale of such ends, the seaming of such ends, and related activity do not infringe any valid claim of U.S. Patent No. 6,935,826;

(E) Finding that this is an exceptional case and awarding to Ball its attorneys' fees;

(F) Awarding to Ball its costs and expenses in this action and such other relief as the Court may deem just.

Respectfully submitted,

/s/ Joshua A. Lorentz

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JURY DEMAND

Ball Metal Beverage Container Corp. respectfully requests a trial by a jury on all issues so triable in this action.

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