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Free-Flow Packaging International, Inc.

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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
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13 Free-Flow Packaging International,
14 Inc.,

Plaintiff,

15 v.

16 Automated Packaging Systems, Inc.,

17 Defendant.
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CASE NO.

Complaint For Patent Infringement

DEMAND FOR JURY TRIAL

1 **COMPLAINT FOR PATENT INFRINGEMENT**

2 Plaintiff Free-Flow Packaging International, Inc. (“FPI”), by and through the
3 undersigned counsel, hereby brings its Complaint for Patent Infringement against
4 Defendant Automated Packaging Systems, Inc. (“Automated Packaging”), and
5 alleges as follows:

6 **INTRODUCTION**

7 1. This is a civil action for injunctive and monetary relief to remedy
8 patent infringement by Automated Packaging of patents assigned to and owned by
9 FPI. The infringed FPI patents asserted in this Complaint are U.S. Patent No.
10 8,323,774 (“774 Patent,” Exhibit A hereto) and U.S. Patent No. 9,003,743 (“743
11 Patent,” Exhibit B hereto).

12 **THE PARTIES**

13 2. Plaintiff FPI is a corporation existing under the laws of the State of
14 Delaware, with its principal place of business at 34175 Ardenwood Blvd., Suite
15 201, Fremont, CA 94555.

16 3. Defendant Automated Packaging is a corporation existing under the
17 laws of the State of Ohio, with its principal place of business at 10175 Philipp
18 Parkway, Streetsboro, OH 44241. Automated Packaging makes, uses, has used,
19 sells, and has sold a system combining a machine and webs, for the manufacturing
20 of inflated webs, to be used for the cushioning of objects transported in containers.

21 4. FPI and Automated Packaging are direct competitors.

22 **JURISDICTION AND VENUE**

23 5. This Court has original subject matter jurisdiction over the claims
24 alleged in this Complaint pursuant to 28 U.S.C. §§ 1331 & 1338(a), and 35 U.S.C.
25 § 1 et seq.

26 6. This Court has personal jurisdiction over Automated Packaging
27 pursuant to the California Long Arm Statute, Cal. Code Civ. Proc § 410.10, and the
28 laws of the United States.

1 7. Automated Packaging regularly solicits business and maintains a
2 persistent course of conduct by conducting business in the Central District of
3 California. Automated Packaging also maintains an established distribution
4 network for offering for sale, selling and shipping products into the Central District
5 of California, including a sales, support, and distribution center in Santa Fe
6 Springs, California. The marketing and sale of the products at issue in this action
7 infringes FPI's patent rights within this State and elsewhere in the United States.
8 Also, Automated Packaging's conduct as described herein will cause tortious
9 injury to FPI, a resident of this state, and permit Automated Packaging to
10 wrongfully derive substantial revenue from activities within this state. Upon
11 information and belief, Automated Packaging derives substantial revenue from
12 activities within this state and has sold a substantial amount of products into this
13 state.

14 8. Venue is proper in this judicial district pursuant to 28 U.S.C.
15 § 1400(b) because Automated has committed acts of infringement and has a
16 regular and established place of business in this District. Automated's website
17 (<http://www.autobag.com/about/our-locations>) lists the West Region Sales Office
18 in Santa Fe Springs, which is within the Central District of California. Automated
19 leases its building in Santa Fe Springs, which contains office supplies; computers;
20 furnishings; and inventory consisting of spare parts, machines, and film product.
21 Automated is licensed to do business in California and currently has twenty-one
22 employees in California with positions in sales, customer service, and
23 management. Several employees in management positions for Automated are
24 based in its Santa Fe Springs office, including its sales supervisor and its service
25 manager. Purchase orders for many Automated sales are sent to this office, and
26 many of Automated's product shipments also originate from this office.

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1 **SUMMARY OF THE DISPUTE**

2 9. Founded in 1967, FPI is a pioneer and award-winning manufacturer of
3 innovative, protective packaging products and packaging systems. FPI’s
4 innovative products include a wide range of packaging technologies, including
5 PMOS (Packaging-Made-On-Site), biodegradable, sustainable and
6 environmentally friendly packaging, void fill air cushions, and Kraft Bubble
7 mailers. FPI’s industry-leading and best-in-class products allow customers to
8 easily and reliably utilize cost efficient effective solutions for all packaging needs.
9 FPI’s air cushion packaging systems help reduce damage claims resulting from
10 broken or damaged products, and offer environmentally-friendly technology to
11 create a smaller carbon footprint. FPI also designs and installs custom dispensing
12 storage systems for air cushions.

13 10. FPI invests heavily in research and development and has a rich history
14 of innovation. FPI has been granted over 85 U.S. patents to protect various
15 innovative proprietary systems and methods, such as its patented “double cushion”
16 technology, which allows for more efficient use of air-filled bagging materials.

17 11. Automated Packaging was founded in 1962 and also sells packaging
18 systems. Unable to compete by developing its own packaging technology,
19 however, Automated Packaging took FPI’s patented technologies without
20 permission. Automated Packaging’s use, sale, offer for sale, and/or importation of
21 infringing products is damaging and will continue to damage FPI’s business,
22 causing irreparable harm, for which there is no adequate remedy at law, unless
23 Automated Packaging’s wrongful acts are enjoined by this Court.

24 **ACCUSED AUTOMATED PACKAGING WEBS**

25 12. Automated Packaging uses, has used, offers to sell, sells, and has sold
26 in the United States a line of webs called “Bubbles on Demand.” This line of films
27 includes at least five products:

- 28 • DuraClear 2000™ Bubbles on Demand

- 1 • AirPouch FastWrap HD Bubbles on Demand
- 2 • AirPouch FastWrap Anti-Static Bubbles on Demand
- 3 • EarthAware® DuraClear 2000™ Biodegradable Bubbles on
- 4 Demand
- 5 • DuraClear 2000™ High Loft Biodegradable Bubbles on
- 6 Demand
- 7 • DuraClear 2000™ High Loft Bubbles on Demand
- 8 • EarthAware® Recycled EZ-Tear AirPouch Bubbles on Demand
- 9 • Recycled High Loft Bubbles on Demand

10 13. Automated Packaging uses, has used, offers to sell, and, on
11 information and belief, intends to sell in the United States a line of webs called
12 “AirPouch Twin Pillows.”

13 14. The complaint collectively refers to all Automated Packaging
14 products referred to in Paragraphs 12 and 13—along with all products with similar
15 relevant functionality—as the “Accused ’774 Products.”

16 15. Each Accused ’774 Product is a type of film that can be inflated on
17 demand, meaning that it is not inflated until it is used by a consumer. For example,
18 according to Automated’s brochure, the Accused ’774 Products include a
19 “wrapping protective packaging solution” that can be “inflate[d] on demand.”
20 Some Accused ’774 Products allow “multi-directional wrapping” of a variety of
21 products as needed by the user (see [http://www.autobag.com/Media/Autobag/
22 Autobag-AirPouch/Technical-Datasheets/Materials-Film/USA%20\(English\)/
23 AirPouch-Wrapping-Brochure.pdf](http://www.autobag.com/Media/Autobag/Autobag-AirPouch/Technical-Datasheets/Materials-Film/USA%20(English)/AirPouch-Wrapping-Brochure.pdf)). These products are described in greater detail
24 on Automated’s website at [http://www.autobag.com/protective-packaging/
25 wrapping-solutions](http://www.autobag.com/protective-packaging/wrapping-solutions).

26 16. Automated Packaging uses, has used, offers to sell, sells, and has sold
27 in the United States a line of webs called “EZ-Tear Pillows.” This line of films
28 includes five products:

- 1 • EarthAware® Recycled EZ-Tear Pillows
- 2 • EarthAware® Biodegradable EZ-Tear Pillows
- 3 • EarthAware® XD Blend™ Biodegradable Premium EZ-Tear
- 4 Pillows
- 5 • DuraClear 2000™ EZ-Tear Pillows
- 6 • Anti-Static EZ-Tear Pillows

7 17. This complaint collectively refers to these Automated Packaging
8 products as the “Accused Automated EZ-Tear Webs.”

9 18. The Accused Automated EZ-Tear Webs are a type of film that can be
10 inflated on demand. The Accused Automated EZ-Tear Webs are a “protective
11 packaging product” that helps “ensure products remain damage free” when shipped
12 (see [http://www.autobag.com/Media/Autobag/Autobag-AirPouch/Technical-](http://www.autobag.com/Media/Autobag/Autobag-AirPouch/Technical-Datasheets/Materials-Film/USA%20(English)/AirPouch-Void-Fill-Brochure.pdf)
13 [Datasheets/Materials-Film/USA%20\(English\)/AirPouch-Void-Fill-Brochure.pdf](http://www.autobag.com/Media/Autobag/Autobag-AirPouch/Technical-Datasheets/Materials-Film/USA%20(English)/AirPouch-Void-Fill-Brochure.pdf)).

14 19. The Accused Automated EZ-Tear Webs are described in greater detail
15 on Automated’s website at [http://www.autobag.com/protective-packaging/void-](http://www.autobag.com/protective-packaging/void-fill-solutions)
16 [fill-solutions](http://www.autobag.com/protective-packaging/void-fill-solutions).

17 **ACCUSED AUTOMATED PACKAGING SYSTEM**

18 20. Automated Packaging uses, has used, offers to sell, sells, and has sold
19 in the United States a machine called the AirPouch® Express 3™.

20 21. The AirPouch® Express 3™ is a void-fill inflation machine. For
21 example, Automated’s brochure for the AirPouch® Express 3™ states that “The
22 AirPouch Express 3 Tabletop Void-fill System provides on-demand, easy-to-use
23 air pillows for high packing productivity.” (see [http://www.autobag.com/Media](http://www.autobag.com/Media/Autobag/Autobag-AirPouch/Technical-Datasheets/Machinery/USA-English/AirPouch-Express-3-Void-fill-System-Technical-Data-Sheet.pdf)
24 [/Autobag/Autobag-AirPouch /Technical-Datasheets/Machinery/USA-English](http://www.autobag.com/Media/Autobag/Autobag-AirPouch/Technical-Datasheets/Machinery/USA-English/AirPouch-Express-3-Void-fill-System-Technical-Data-Sheet.pdf)
25 [/AirPouch-Express-3-Void-fill-System-Technical-Data-Sheet.pdf](http://www.autobag.com/Media/Autobag/Autobag-AirPouch/Technical-Datasheets/Machinery/USA-English/AirPouch-Express-3-Void-fill-System-Technical-Data-Sheet.pdf)).

26 22. The AirPouch® Express 3™ can be used in combination with the
27 Accused Automated EZ-Tear Webs to create a system for manufacturing void-fill
28 units. The combination of these elements is referred to herein as the “Accused

1 Automated System.”

2 **AUTOMATED’S INFRINGEMENT OF FPI’S PATENTS**

3 **COUNT 1 (Direct Infringement of U.S. Patent No. 8,323,774**

4 23. FPI incorporates by reference the allegations in paragraphs 1-22
5 above.

6 24. On December 4, 2012, the United States Patent & Trademark Office
7 issued U.S. Patent No. 8,323,774 for “Apparatus for Inflating and Sealing Pillows
8 in Packaging Cushions.” A copy of the ’774 Patent is attached hereto as Exhibit A.
9 By assignment from the inventors in August of 2011, FPI is the sole owner of the
10 ’774 Patent.

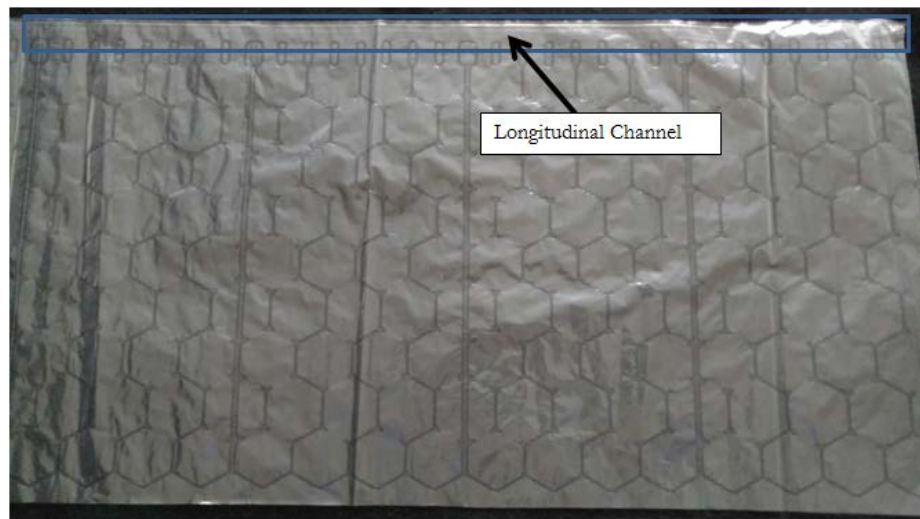
11 25. On information and belief, Automated Packaging has infringed and
12 continues to infringe one or more claims of the ’774 patent, including claim 1,
13 literally or under the doctrine of equivalents, by making, using, selling, and/or
14 offering to sell in the United States without authority, at least the Accused ’774
15 Products.

16 26. Automated manufactures preconfigured plastic film products, such as
17 the Accused ’774 Products. Automated’s entire product line takes the form of
18 preconfigured plastic films that are inflated at customer sites using inflator
19 machines (see <http://www.autobag.com/protective-packaging/protective->
20 [packaging-overview](http://www.autobag.com/protective-packaging/protective-)). The Accused ’774 Products, when inflated, take the form of
21 air-filled packaging cushions. The Accused ’774 Products are formed from a web
22 of material having a leading end and a trailing end (for example, the AirPouch
23 FastWrap HD Bubbles are a film that has a leading and trailing end with a number
24 of chambers as shown in the image below). In their uninflated state, the Accused
25 ’774 Products contain a channel with unsealed openings into the film’s chambers
26 that allows air to enter the chambers as the film is passed through an inflation
27 machine (for example, as explained in Paragraph 15, the AirPouch FastWrap HD
28 Bubbles are a film that can be continuously inflated by an inflation machine).

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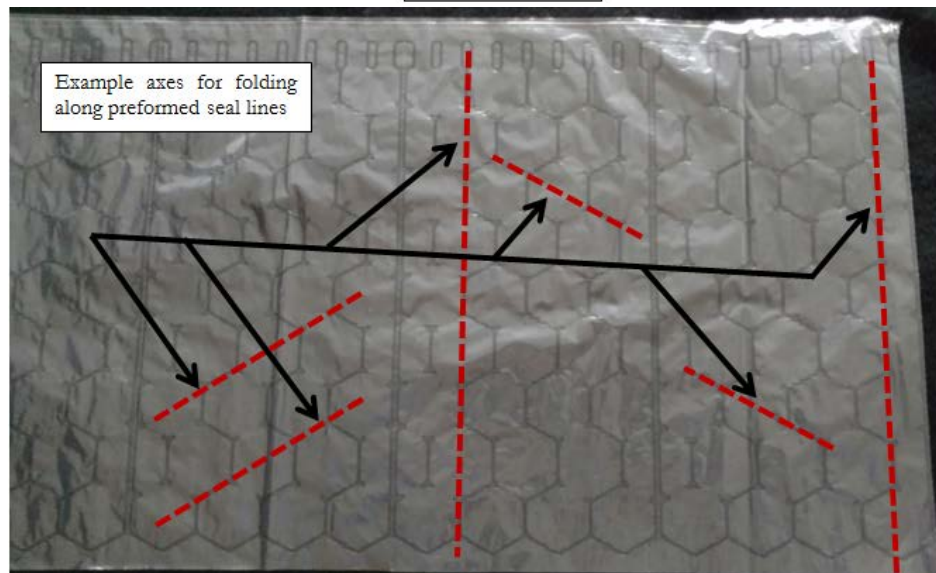
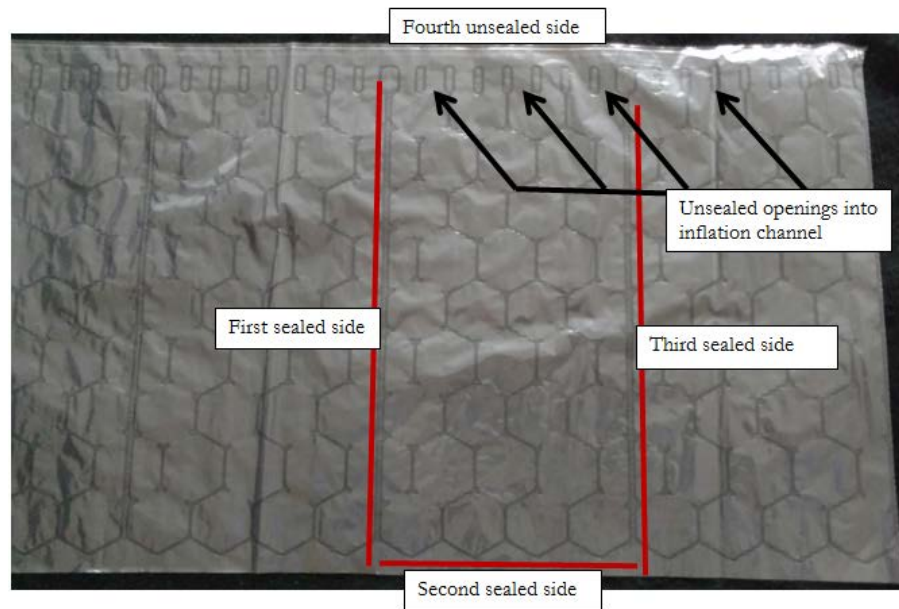


27. The Accused '774 Products have a channel extending the entire length of the film that is open at the leading end to allow loading of the film onto a guide member of an inflation machine for inflation (for example, the AirPouch FastWrap HD Bubbles have a longitudinal channel at the top of the material as shown below).



28. As shown in the graphic below, the Accused '774 Products have multiple rectangular inflatable chambers, where each chamber has three sides closed and a fourth side with an unsealed opening into the channel (for example, each chamber of the AirPouch FastWrap HD Bubbles has four sides, one of which has an unsealed opening). The Accused '774 Products also contain multiple preformed seal line elements within the interior of the chambers that permit the

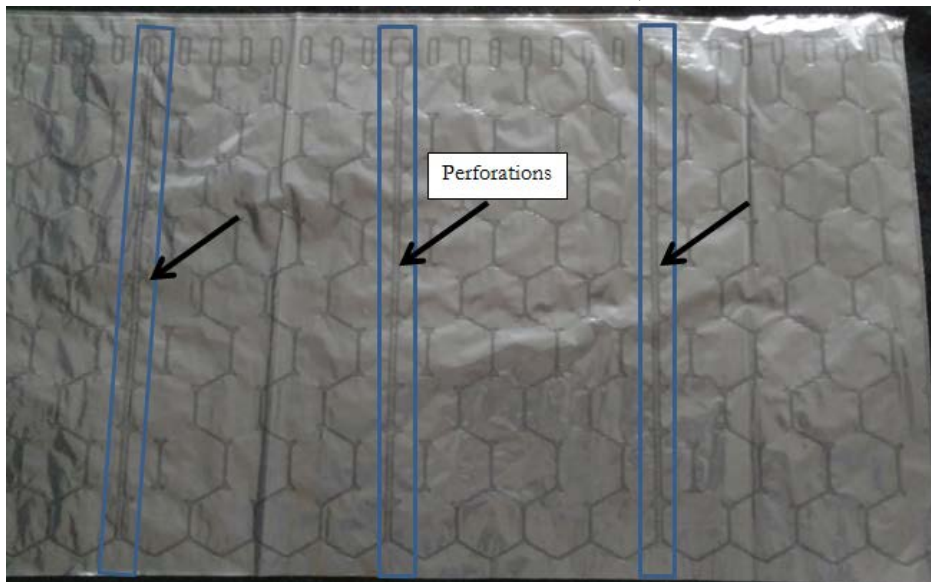
1 chambers to be folded along a line extending through the seal line elements (for
2 example, each chamber of the AirPouch FastWrap HD Bubbles has preformed
3 elements within the chambers that permit the chambers to be folded along the
4 preformed seal line elements).



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29. The Accused '774 Products have multiple rectangular chambers, which are separated by laterally extending perforations (for example, the AirPouch FastWrap HD Bubbles has lateral perforations separating chambers of the film, which extend the width of the material as shown below).



30. Automated Packaging has constructive knowledge of FPI's rights under the '774 patent by virtue of FPI's website <http://www.fpintl.com/patent.aspx>, which identifies the Cell-O air cushions, the POWER PAK'R™ air cushions, the PRO PAK'R™ air cushions, and the MINI PAK'R™ air cushions with the '774 patent. Furthermore, Automated has had actual knowledge that its activities

1 infringe the '774 patent since at least April 4, 2017, when FPI served a complaint
2 filed in the Northern District of California on Automated setting out Automated's
3 infringement of the '774 patent. Proof of Service of Complaint filed March 31,
4 2017, *Free-Flow Packaging Int'l, Inc. v. Automated Packaging Sys., Inc.*, No.
5 3:17-cv-01803-SK (N.D. Cal. April 12, 2017), ECF No. 16.

6 31. Upon information and belief, Automated Packaging has profited from
7 and will continue to profit from its infringing activities. FPI has been and will be
8 damaged by Automated Packaging's infringing activities and is entitled to recover
9 damages adequate to compensate it for such infringement, but, in no event, less
10 than a reasonable royalty. The amount of monetary damages FPI has suffered by
11 the acts of Automated Packaging set forth above cannot be determined without an
12 accounting.

13 32. The harm to FPI within this judicial district and elsewhere in the
14 United States resulting from the acts of infringement of the '774 Patent by
15 Automated Packaging is irreparable, continuing, not fully compensable by money
16 damages, and will continue unless Automated Packaging's infringing activities are
17 enjoined.

18 33. Automated Packaging's infringing activities relating to the Accused
19 '774 Products make this an exceptional case entitling FPI to the recovery of its
20 reasonable attorneys' fees under 35 U.S.C. § 285 or other applicable law.

21 **COUNT 2 (Direct Infringement of U.S. Patent No. 9,003,743)**

22 34. FPI incorporates by reference the allegations in paragraphs 1-33
23 above.

24 35. On April 14, 2015, the United States Patent & Trademark Office
25 issued U.S. Patent No. 9,003,743 for "Apparatus for Inflating and Sealing Pillows
26 in Packaging Cushions." A true and correct copy of the '743 Patent is attached
27 hereto as Exhibit B. By assignment from the inventors in May of 2009, FPI is the
28 sole owner of the '743 Patent.

1 36. FPI asserted a separate patent that it does not assert here, U.S. Patent
2 No. 7,536,837 (“’837 Patent”), in a separate lawsuit eight years ago. A jury found
3 the asserted claims of the ’837 Patent invalid, and neither the district court nor the
4 Federal Circuit disturbed the jury’s verdict. *Pregis Corp. v. Kappos*, 700 F.3d
5 1348, 1352-53, 56 (Fed. Cir. 2012). During the prosecution of the ’743 Patent, FPI
6 provided the Patent Office Examiner documents from that litigation, including
7 expert reports and the judgment of invalidity that the district court entered. The
8 Examiner issued the ’743 Patent over these explicit disclosures.

9 37. The claims of the ’743 Patent differ from the claims of the ’837 Patent
10 at issue in this prior litigation. The ’743 Patent made a narrowing change to
11 exclude perforations “separating each chamber or multiple chambers.” It further
12 contains a “feed mechanism” limitation that was not present in the relevant claims
13 of the ’837 Patent.

14 38. On information and belief, Automated Packaging has infringed and
15 continues to infringe one or more claims of the ’743 patent, including claim 1,
16 literally or under the doctrine of equivalents, by making, using, selling, and/or
17 offering to sell in the United States without authority, at least the Accused
18 Automated EZ-Tear Webs.

19 39. The Accused Automated System is a system for manufacturing air
20 cushions for use as packaging dunnage (for example, the AirPouch[®] Express 3[™], as
21 shown below, in combination with the Accused Automated Films is a system for
22 making packaging dunnage).

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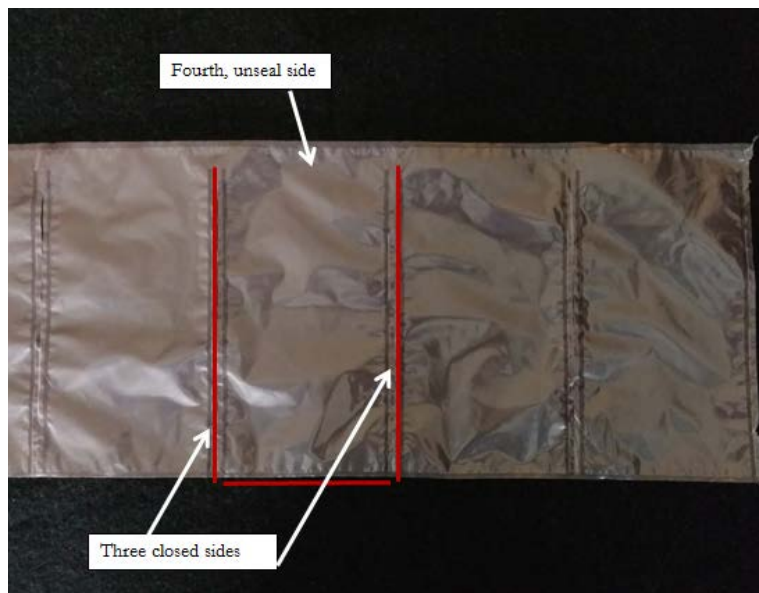


40. As shown in the graphic below, the Accused Automated System utilizes the Accused Automated EZ-Tear Webs, which are a longitudinally extending plastic film comprising a relatively narrow longitudinally extending channel that allows for inflation of the material (for example, the DuraClear 2000 EZ-Tear Pillows).



The Accused Automated EZ-Tear Webs have at least one row of generally rectangular presealed inflatable chambers each having three sides closed and a fourth side with an unsealed opening into the longitudinally extending channel (for example, as shown below, the DuraClear 2000 EZ-Tear Pillows define three closed sides and fourth unsealed side for inflation).

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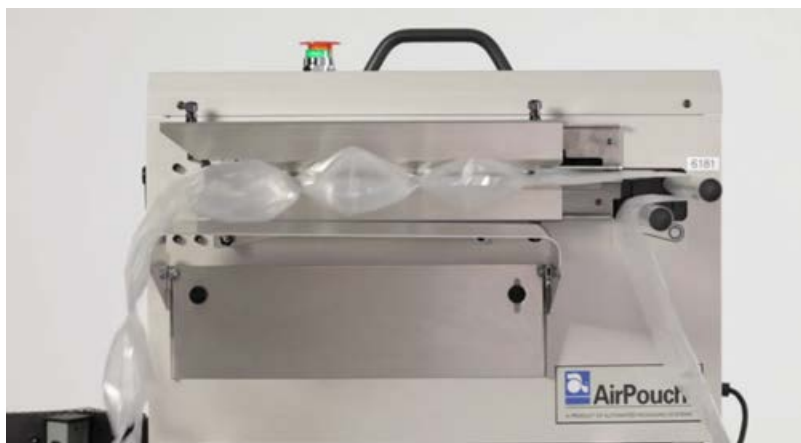


The Accused Automated EZ-Tear Webs have a plurality of laterally extending perforations separating the inflatable chambers, wherein the laterally extending perforations extend the entire width of the film (for example, as shown below, the DuraClear 2000 EZ-Tear Pillows define chambers separated by perforations that extend the entire width of the film).

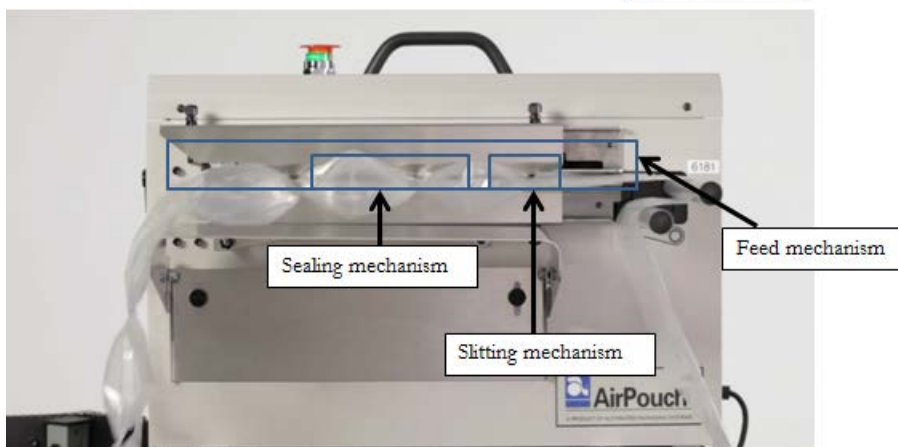


41. The Accused Automated System includes an inflation machine for inflating the inflatable chambers of the plastic film (for example, the AirPouch[®] Express 3[™], as shown below, is a machine for inflating plastic film).

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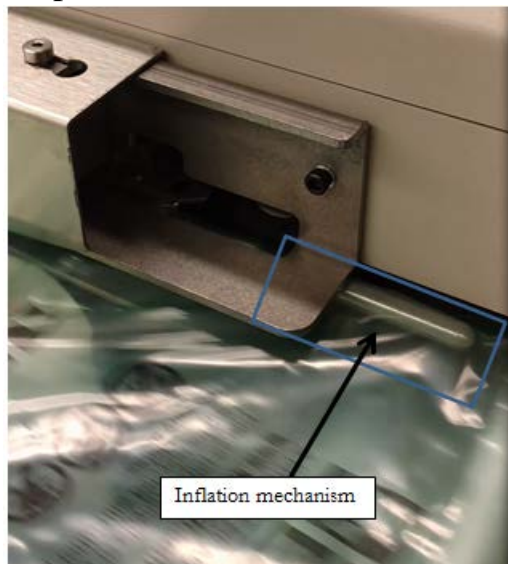
42. The Accused Automated System contains a feed mechanism that causes the plastic film to be gripped at or near the narrow longitudinally extending channel and drawn in a continuous and uninterrupted manner through inflation, sealing and slitting mechanisms in a planar path (for example, the AirPouch[®] Express 3[™], as shown below, contains a feed mechanism that pulls in the film having a sealing and slitting mechanism in a planar path).



43. The Accused Automated System includes an inflation mechanism that comprises a source of inflation gas and an air outlet which together cause inflation gas to be injected into the relatively narrow longitudinally extending channel of the plastic film as the plastic film is drawn through the inflation mechanism (for example, the AirPouch[®] Express 3[™], as shown below, contains an inflation

1 mechanism that pumps compressed air into the film material).

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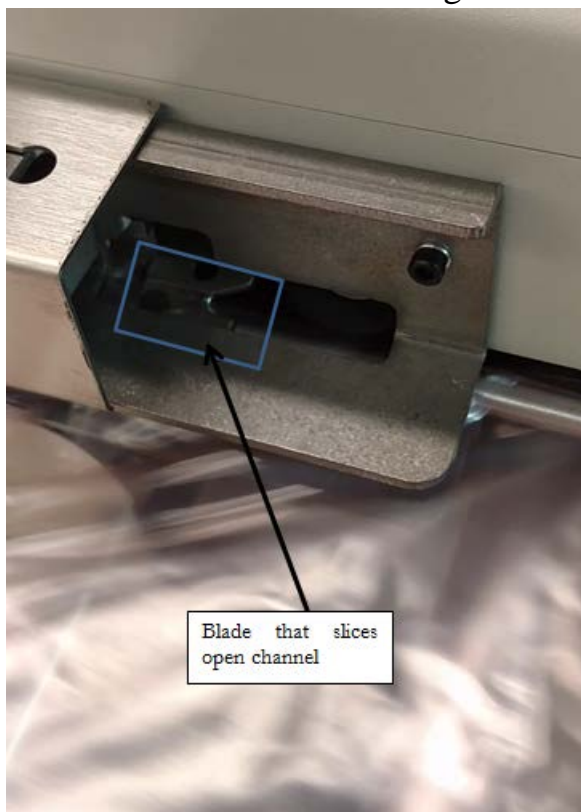
11 44. The Accused Automated System includes a sealing mechanism that
12 comprises an electrically energized heating element that generates heat to be
13 delivered to the inflation side of one or more of the inflatable chambers to seal the
14 unsealed opening and trap the inflation gas within the inflatable chambers as the
15 plastic film is drawn through the sealing mechanism (for example, the AirPouch®
16 Express 3™, as shown below, heat seals the edge of the Accused Automated EZ-
17 Tear Webs after they are filled and as they are drawn through the machine).

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26 45. The Accused Automated System includes a slitting mechanism
27 comprising a blade that slices open the relatively narrow longitudinally extending
28 channel of the plastic film as the film is drawn through the slitting mechanism (for

1 example, the AirPouch® Express 3™, as shown below, slices open the narrow
2 channel in the film with a blade as it is drawn through the machine).



16 46. Automated Packaging has constructive knowledge of FPI's rights
17 under the '743 patent by virtue of FPI's website <http://www.fpintl.com/patent.aspx>,
18 which identifies the Cell-O air cushions, the POWER PAK'R™ air cushions, the
19 PRO PAK'R™ air cushions, and the MINI PAK'R™ air cushions with the '743
20 patent. Furthermore, Automated has had actual knowledge that its activities
21 infringe the '743 patent since at least April 4, 2017, when FPI served a complaint
22 filed in the Northern District of California on Automated setting out Automated's
23 infringement of the '743 patent. Proof of Service of Complaint filed March 31,
24 2017, *Free-Flow Packaging Int'l, Inc. v. Automated Packaging Sys., Inc.*, No.
25 3:17-cv-01803-SK (N.D. Cal. April 12, 2017), ECF No. 16.

26 47. Upon information and belief, Automated Packaging has profited from
27 and will continue to profit from its infringing activities. FPI has been and will be
28 damaged by Automated Packaging's infringing activities and is entitled to recover

1 damages adequate to compensate it for such infringement, but, in no event, less
2 than a reasonable royalty. The amount of monetary damages FPI has suffered by
3 the acts of Automated Packaging set forth above cannot be determined without an
4 accounting.

5 48. The harm to FPI within this judicial district and elsewhere in the
6 United States resulting from the acts of infringement of the '743 Patent by
7 Automated Packaging is irreparable, continuing, not fully compensable by money
8 damages, and will continue unless Automated Packaging's infringing activities are
9 enjoined.

10 49. Automated Packaging's infringing activities relating to the Accused
11 Automated System make this an exceptional case entitling FPI to the recovery of
12 its reasonable attorneys' fees under 35 U.S.C. § 285 or other applicable law.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, FPI respectfully requests that this Court enter judgment
15 against Automated Packaging as follows:

16 A. That Automated Packaging is liable for infringement of one or more
17 claims of the '774 Patent and the '743 Patent, as alleged herein;

18 B. That Automated Packaging and its parents, subsidiaries, affiliates,
19 successors, predecessors, assigns, and the officers, directors, agents, servants and
20 employees of each of the foregoing, customers and/or licensees and those persons
21 acting in concert or participation with any of them, are preliminarily and
22 permanently enjoined and restrained from continued infringement, including but
23 not limited to using, making, importing, offering for sale and/or selling products
24 that infringe each of the Asserted Patents prior to their expiration, including any
25 extensions;

26 C. An award of damages adequate to compensate FPI for the
27 infringement that has occurred, pursuant to 35 U.S.C. § 284, including
28 prejudgment and postjudgment interest;

1 D. An award of treble damages for willful infringement pursuant to 35
2 U.S.C. § 284;

3 E. An award of attorneys' fees based on this being an exceptional case
4 pursuant to 35 U.S.C. § 285 and 15 U.S.C § 1117(a), including prejudgment
5 interest on such fees;

6 F. An award of costs and expenses in this action;

7 G. An order compelling an accounting for infringing acts not presented at
8 trial and an award by the Court of additional damages for such acts.

9 H. An award of any further relief that this Court deems just and proper.

10 **JURY DEMAND**

11 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff
12 hereby demands a trial by jury of all issues so triable.

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1 Dated: August 29, 2017

Respectfully submitted,

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LATHAM & WATKINS LLP

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By /s/ Richard G. Frenkel

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rick.frenkel@lw.com

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Nicholas H. Yu (CA 298768)

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