

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**VERASEAL LLC,**

Plaintiff,

v.

**COSTCO WHOLESALE  
CORPORATION,**

Defendant.

CASE NO. 2:17-cv-713

**PATENT CASE**

**JURY TRIAL DEMANDED**

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**ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT  
AGAINST COSTCO WHOLESALE CORPORATION**

Plaintiff Veraseal LLC files this Original Complaint for Patent Infringement against Costco Wholesale Corporation (“Defendant”) and would respectfully show the Court as follows:

**I. THE PARTIES**

1. Plaintiff Veraseal LLC (“Veraseal” or “Plaintiff”) is a Texas limited liability company with its principal place of business in the Eastern District of Texas at 5068 W. Plano Pkwy, Suite 300, Plano, Texas 75093.

2. On information and belief, Defendant Costco Wholesale Corporation is a Washington corporation, with a place of business at 999 Lake Dr., Issaquah, WA 98027. Defendant is registered for the right to transact business in Texas and has a registered agent in Texas: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

**II. JURISDICTION AND VENUE**

3. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction of such action under 28 U.S.C. §§ 1331 and 1338(a).

4. On information and belief, Defendant is subject to this Court's specific and general personal jurisdiction, pursuant to due process and the Texas Long Arm Statute, due at least to its substantial business in this forum, including at least a portion of the infringement alleged herein.

5. Defendant has four retail warehouse stores within the Eastern District of Texas. Defendant has locations at 11220 Dallas Pkwy, Frisco, Texas 75033; 3800 N Central Expy, Plano, Texas 75074; 1701 Dallas Pkwy, Plano, Texas 75093; and 851 State Highway 121 Byp, Lewisville, Texas 75067.

6. On information and belief, within this state, Defendant has sold and offered for sale the patented inventions thereby committing acts of patent infringement alleged herein. In addition, on information and belief, Defendant has derived substantial revenues from its infringing acts occurring within the State of Texas and this District, including due at least to its sale of products within the State of Texas and from this District. Further, on information and belief, Defendant is subject to the Court's general jurisdiction, including from regularly doing or soliciting business, engaging in other persistent courses of conduct, and deriving substantial revenue from goods and services provided to persons or entities in the State of Texas and in this District. Further, on information and belief, Defendant is subject to the Court's personal jurisdiction at least due to its sale of products and/or services within the State of Texas and within this District. Defendant has committed such purposeful acts and/or transactions in the State of Texas and in this District, such that it reasonably should know and expect that it could be haled into this Court because of such activity.

7. Venue is proper in this district under 28 U.S.C. § 1400(b). On information and belief, Defendant has regular and established places of business in this District and has committed acts of infringement in this District such that this Court is a fair and reasonable venue for the

litigation of this action. Defendant has at least four regular and established places of business within this District. Defendant is registered to do business in Texas and has a registered agent in Dallas, Texas. On information and belief, from and within this District Defendant has committed at least a portion of the infringements at issue in this case by selling and offering for sale the Accused Instrumentalities (described below) in its stores located within this District.

8. For these reasons, personal jurisdiction exists and venue is proper in this Court.

**III. COUNT I**  
**(PATENT INFRINGEMENT OF UNITED STATES PATENT NO. 6,041,953)**

9. Plaintiff incorporates the above paragraphs herein by reference.

10. On March 28, 2000, United States Patent No. 6,041,953 (“the ‘953 patent”) was duly and legally issued by the United States Patent and Trademark Office. The ‘953 Patent is titled “Containers and Closures Therefor.” The application leading to the ‘953 patent was filed on March 5, 1998. The application leading to the ‘953 patent is a continuation-in-part of application No. 08/930,497 filed as application No. PCT/AU96/00195, April 4, 1996. A true and correct copy of the ‘953 Patent is attached hereto as Exhibit A and incorporated herein by reference.

11. Veraseal is the assignee of all right, title and interest in the ‘953 patent, including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the ‘953 patent. Accordingly, Veraseal possesses the exclusive right and standing to prosecute the present action for infringement of the ‘953 Patent by Defendant.

12. The invention of the ‘953 patent relates to the field of containers and closures. (Ex. A at col. 1:7-9).

13. Prior art containers and closures had many minor surface imperfections caused by the molding operations and thermal contraction. (*Id.* at col. 1:10-12). The imperfections made it extremely difficult to properly seal the containers. (*Id.* at col. 1:12-19). Various shapes of screw

threaded containers, closures, and sealing gaskets have been used including complementary cone-shaped sealing surfaces for containers and closures with or without machine finish of the inter-engaging parts. (*Id.* at col. 1:20-24). These arrangements were costly, often required considerable physical effort to lock and unlock the closure from the container, and still sometimes leaked. (*Id.* at col. 1:24-29).

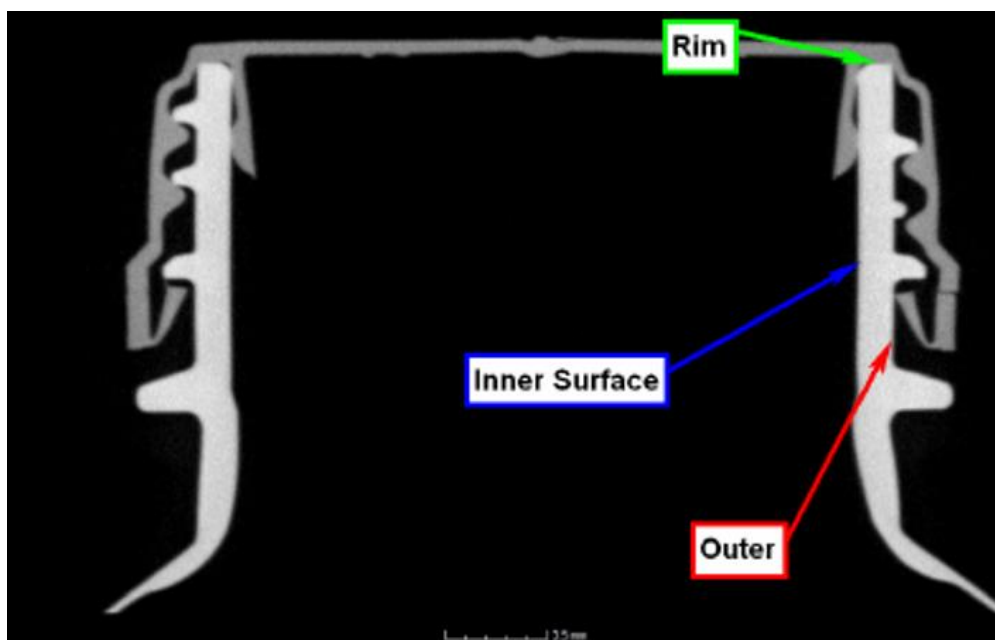
14. The inventor of the ‘953 patent recognized the problems of the prior art and designed a container and removable closure that “overcomes the problems previously encountered and provides a simple and inexpensive construction whereby the closure is effectively sealed and preferably locked to the container to effect a leak-proof seal with minimum effort.” (Ex. A at col. 1:30-34). The claimed invention is described more fully below in the context of infringement.

15. **Direct Infringement.** Upon information and belief, Defendant has been directly infringing at least claims 1-4 of the ‘953 patent in the State of Texas, in this District, and elsewhere in the United States, by actions comprising selling and offering for sale containers with removable closures including 500 ml Kirkland Signature water bottle products (“Accused Instrumentality”).

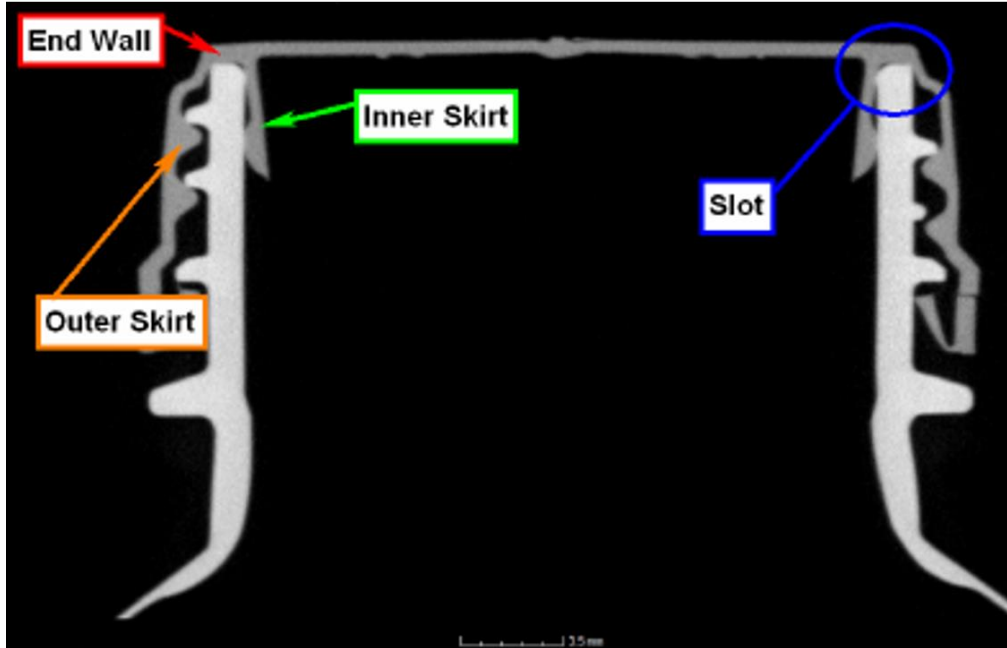
16. Upon information and belief, the Accused Instrumentality is a container and a removable closure that can be applied to the container in a sealing position:



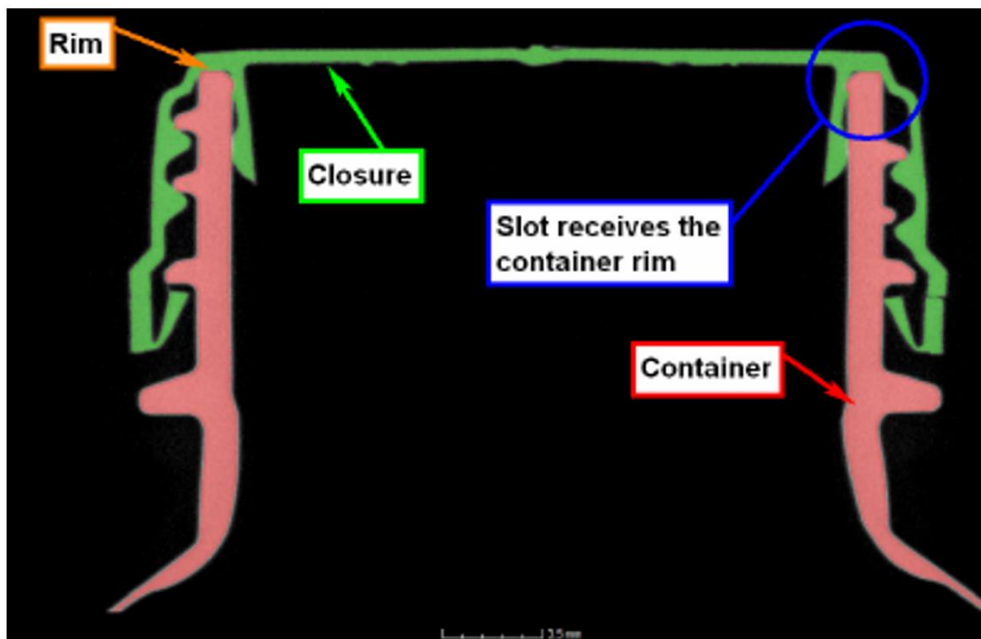
17. The Accused Instrumentality has a container with an outlet having an inner and outer surface terminating at one end in a rim:



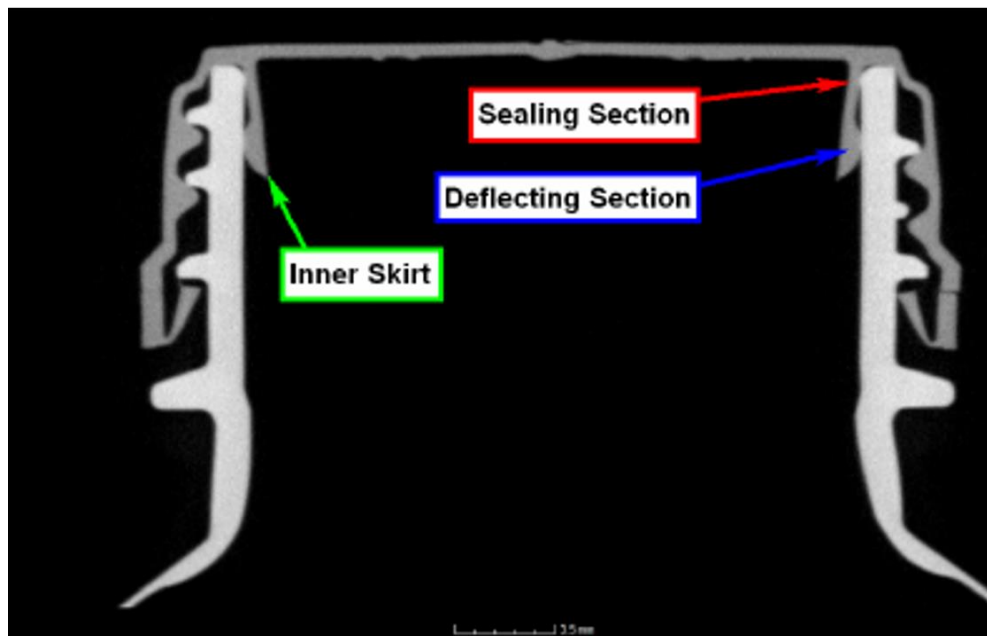
18. The closure of the Accused Instrumentality has an end wall with an inner and outer skirt and the inner and outer skirts define a slot between them:



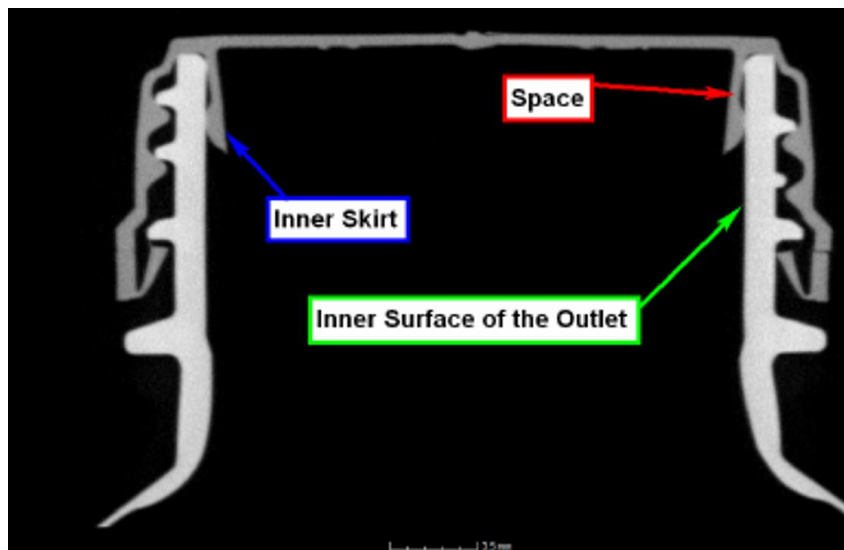
19. The slot of the Accused Instrumentality receives the container rim when the closure is applied to the container and is in a sealing position:



20. The inner skirt of the closure of the Accused Instrumentality has a deflecting section in the region of the free end of the inner skirt, and a sealing section spaced from the deflecting section:

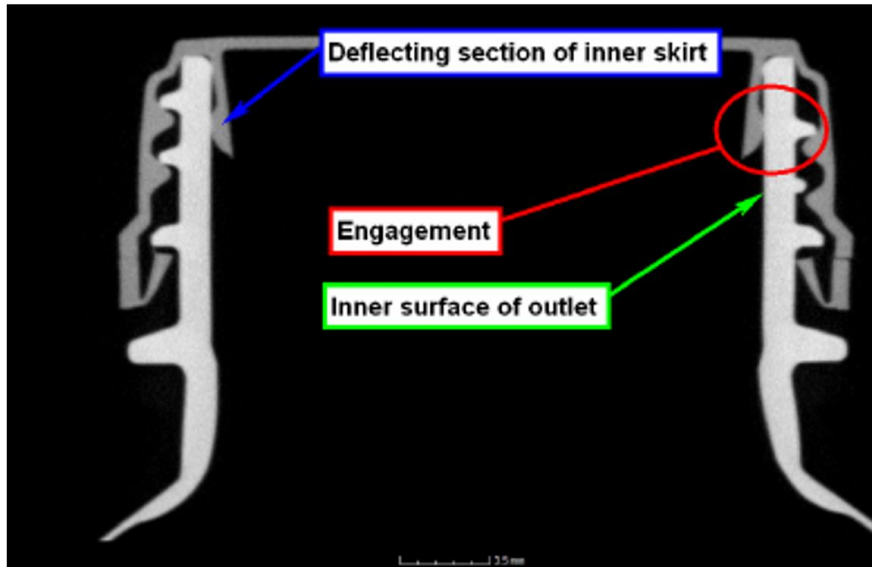


21. Between the deflecting and sealing sections of the closure of the Accused Instrumentality, there is a space between the inner skirt of the closure and the inner surface of the outlet of the container:

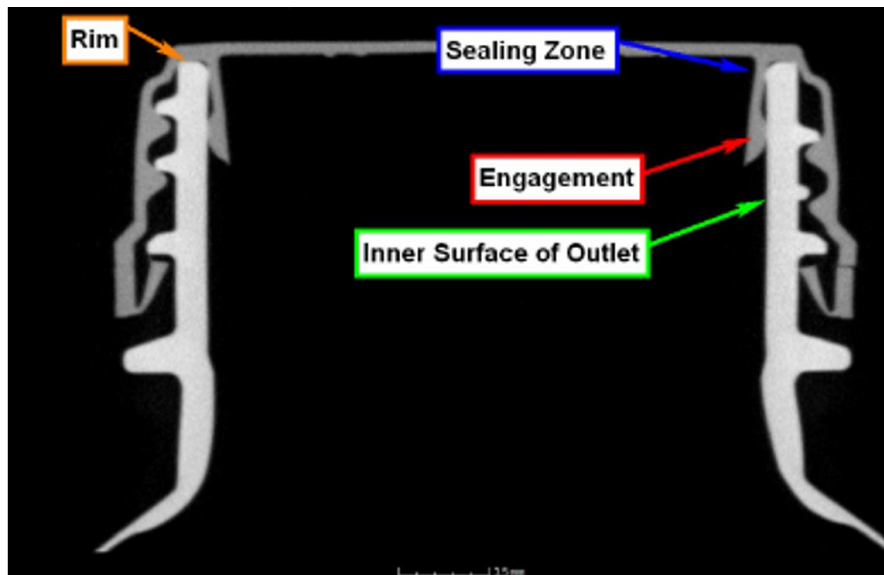


22. The cross-sectional area of the deflecting section of the closure of the Accused Instrumentality is greater than the cross-sectional area of the inner surface of the outlet of the

container such that when the closure is applied to the container, the deflecting section of the inner skirt engages the inner surface of the outlet and causes a deflection thereof:



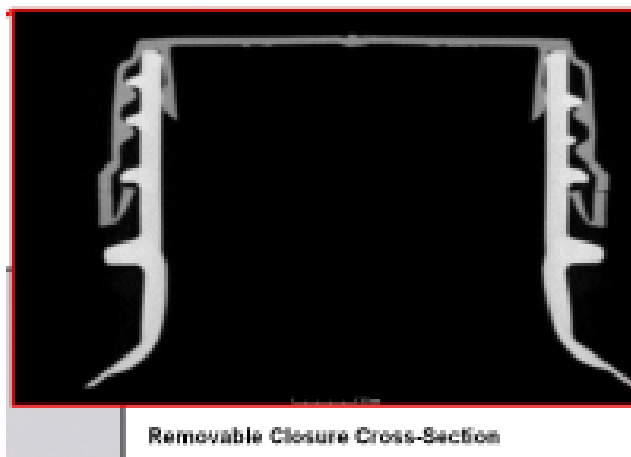
23. The sealing section of the closure of the Accused Instrumentality engages the inner surface and rim of the outlet of the container in a sealing engagement with the sealing zone to seal the closure to the container:



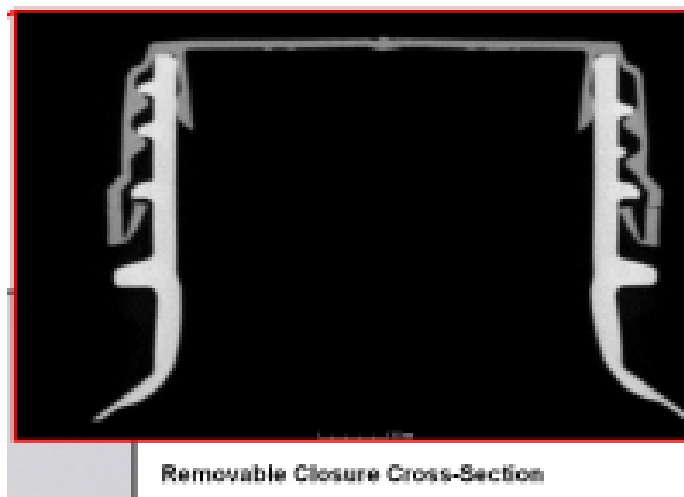
24. The Accused Instrumentality has a container outlet formed of PET.



25. The Accused Instrumentality container has a primary lock means where the container cooperates on the closure to lock the closure to the container. The container and the closure both have interlocking threads.



26. The primary lock means of the Accused Instrumentality has a threaded section on the inner surface of the outer skirt of the closure and a threaded section on the outer surface of the container, which threaded sections engage:



27. Plaintiff has been damaged as a result of Defendant's infringing conduct. Defendant is thus liable to Plaintiff for damages in an amount that adequately compensates Plaintiff for such Defendant's infringement of the '953 patent, *i.e.*, in an amount that by law cannot

be less than would constitute a reasonable royalty for the use of the patented technology, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

28. On information and belief, Defendant had notice of the '953 patent by operation of law and as described above, and there are no marking requirements that have not been complied with.

#### **VI. JURY DEMAND**

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

#### **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

- a. Judgment that one or more claims of United States Patent No. 6,041,953 has been infringed, either literally and/or under the doctrine of equivalents, by Defendant;
- b. Judgment that Defendant account for and pay to Plaintiff all damages to and costs incurred by Plaintiff because of Defendant's infringing activities and other conduct complained of herein;
- c. That Plaintiff be granted pre-judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein;
- d. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: October 26, 2017

Respectfully submitted,

/s/ David R. Bennett

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