

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FREE-FLOW PACKAGING)	CASE NO. 5:17-cv-02318
INTERNATIONAL, INC.,)	
)	JUDGE SARA LIOI
Plaintiff,)	
)	
v.)	
)	
AUTOMATED PACKAGING)	AMENDED COMPLAINT FOR
SYSTEMS, INC.,)	PATENT INFRINGEMENT
)	
Defendant.)	<u>DEMAND FOR JURY TRIAL</u>
)	

Plaintiff Free-Flow Packaging International, Inc. (“FPI”), by and through the undersigned counsel, hereby files this Amended Complaint for Patent Infringement against Defendant Automated Packaging Systems, Inc. (“Automated Packaging”), and alleges as follows:

INTRODUCTION

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

THE PARTIES

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

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

4. FPI and Automated Packaging are direct competitors.

JURISDICTION AND VENUE

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

6. This Court has personal jurisdiction over Automated Packaging pursuant to the provisions of the Ohio Long Arm Statute, O.R.C. § 2307.382, because Automated resides in, maintains offices in, and has committed infringing acts in this State.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b) because Automated Packaging resides in this District and has committed acts of infringement and has a regular and established place of business in this District.

SUMMARY OF THE DISPUTE

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

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

10. Automated Packaging was founded in 1962 and also sells packaging systems. Unable to compete by developing its own packaging technology, however, Automated Packaging took FPI's patented technologies without permission. Automated Packaging's use,

sale, offer for sale, and/or importation of infringing products is damaging and will continue to damage FPI's business, causing irreparable harm, for which there is no adequate remedy at law, unless Automated Packaging's wrongful acts are enjoined by this Court.

ACCUSED AUTOMATED PACKAGING WEBS

11. Automated Packaging uses, has used, offers to sell, sells, and has sold in the United States a line of webs called "Bubbles on Demand." This line of films includes at least eight products:

- DuraClear 2000™ Bubbles on Demand
- AirPouch FastWrap HD Bubbles on Demand
- AirPouch FastWrap Anti-Static Bubbles on Demand
- EarthAware® DuraClear 2000™ Biodegradable Bubbles on Demand
- DuraClear 2000™ High Loft Biodegradable Bubbles on Demand
- DuraClear 2000™ High Loft Bubbles on Demand
- EarthAware® Recycled EZ-Tear AirPouch Bubbles on Demand
- Recycled High Loft Bubbles on Demand

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

13. This Amended Complaint collectively refers to all Automated Packaging products identified in Paragraphs 11 and 12—along with all products with similar relevant functionality—as the "Accused '774 Products."

14. Each Accused '774 Product is a type of film that can be inflated on demand, meaning that it is not inflated until it is used by a consumer. For example, according to Automated's brochure, the Accused '774 Products include a "wrapping protective packaging solution" that can be "inflate[d] on demand." Some Accused '774 Products allow "multi-directional wrapping" of a variety of products as needed by the user (see [http://www.autobag.com/Media/Autobag/Autobag-AirPouch/Technical-Datasheets/Materials-Film/USA%20\(English\)/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 on Automated's website at <http://www.autobag.com/protective-packaging/wrapping-solutions>.

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

- EarthAware® Recycled EZ-Tear Pillows
- EarthAware® Biodegradable EZ-Tear Pillows
- EarthAware® XD Blend™ Biodegradable Premium EZ-Tear Pillows
- DuraClear 2000™ EZ-Tear Pillows
- Anti-Static EZ-Tear Pillows

16. This complaint collectively refers to these Automated Packaging products as the "Accused Automated EZ-Tear Webs."

17. The Accused Automated EZ-Tear Webs are a type of film that can be inflated on demand. The Accused Automated EZ-Tear Webs are a "protective packaging product" that helps "ensure products remain damage free" when shipped (see [http://www.autobag.com/Media/Autobag/Autobag-AirPouch/Technical-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)).

18. The Accused Automated EZ-Tear Webs are described in greater detail on Automated's website at <http://www.autobag.com/protective-packaging/void-fill-solutions>.

ACCUSED AUTOMATED PACKAGING SYSTEM

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

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

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

AUTOMATED’S INFRINGEMENT OF FPI’S PATENTS

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

22. FPI incorporates by reference the allegations in paragraphs 1-21 above.

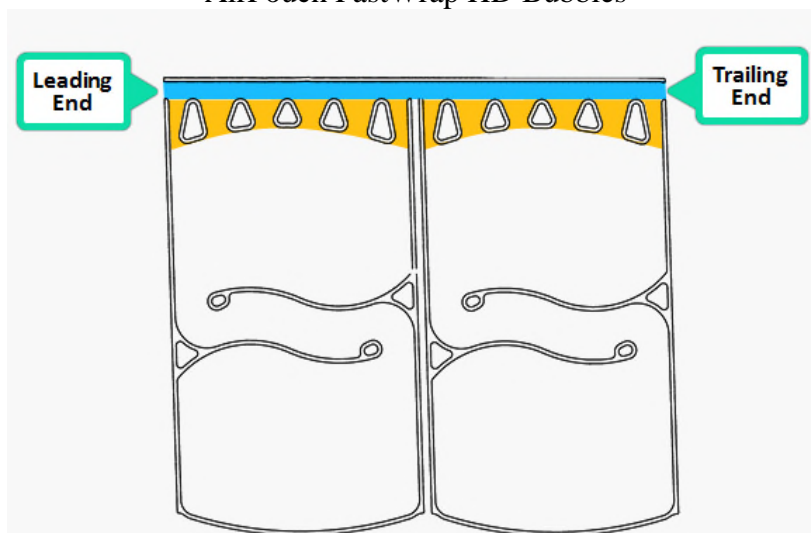
23. On December 4, 2012, the United States Patent & Trademark Office issued U.S. Patent No. 8,323,774 for “Apparatus for Inflating and Sealing Pillows in Packaging Cushions.” A copy of the ’774 Patent is attached hereto as Exhibit A. By assignment from the inventors in August of 2011, FPI is the sole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

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

25. Automated manufactures preconfigured plastic film products, such as the Accused ’774 Products. Automated’s entire product line takes the form of preconfigured plastic films that are inflated at customer sites using inflator machines (see <http://www.autobag.com/protective-packaging/protective-packaging-overview>). The Accused ’774 Products, when inflated, take the form of air-filled packaging cushions. The Accused ’774 Products are formed from a web of material having a leading end and a trailing end (for example, the AirPouch FastWrap HD Bubbles and AirPouch Twin Pillows are films that have a leading and trailing end with a number of chambers as shown in the images below). In their uninflated state, the Accused ’774 Products contain a channel with unsealed openings into the film’s chambers that allow air to enter the chambers as the film is passed through an inflation machine (for example, as explained in Paragraph 14, the AirPouch FastWrap HD Bubbles and AirPouch Twin Pillows are films that can be continuously inflated by an inflation machine).

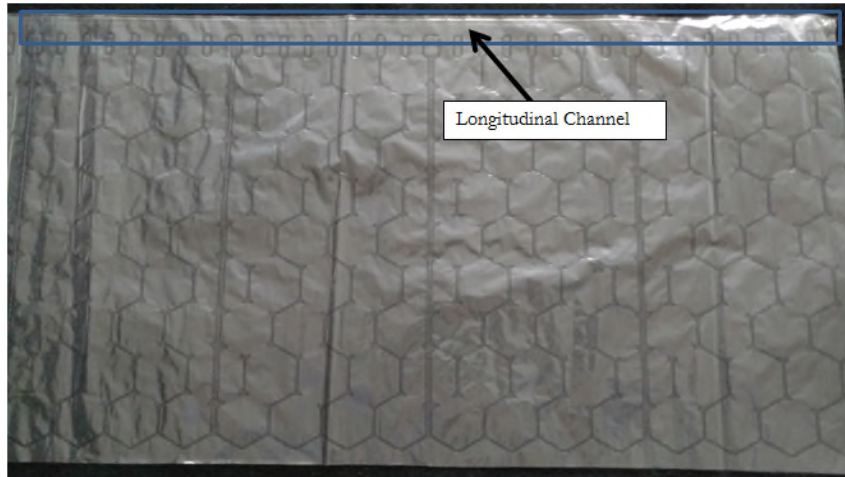


AirPouch FastWrap HD Bubbles

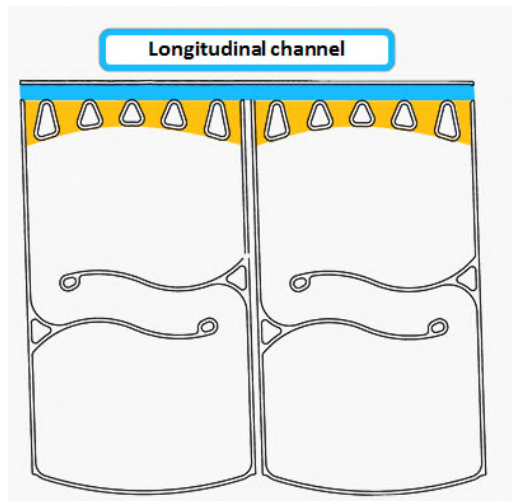


AirPouch Twin Pillows

26. 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 and AirPouch Twin Pillows have a longitudinal channel at the top of the material as shown in blue in the images below).

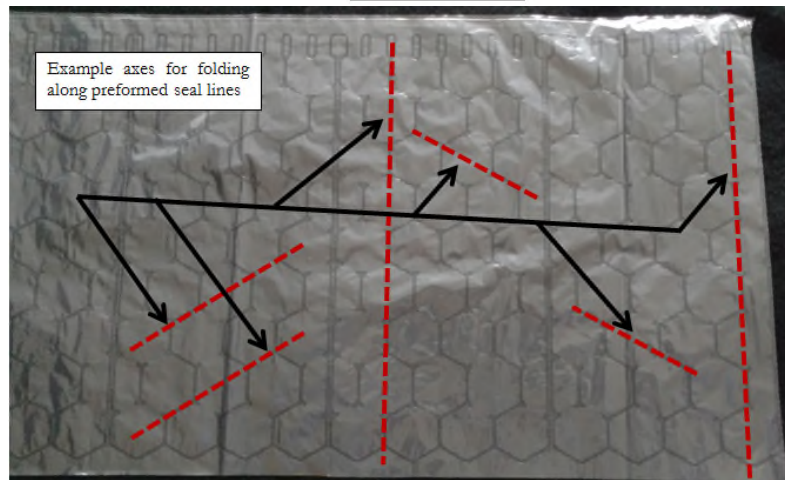
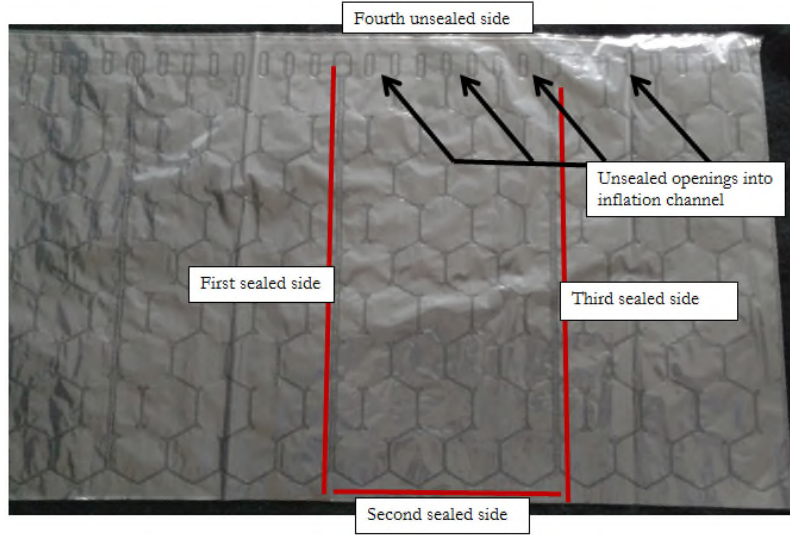


AirPouch FastWrap HD Bubbles

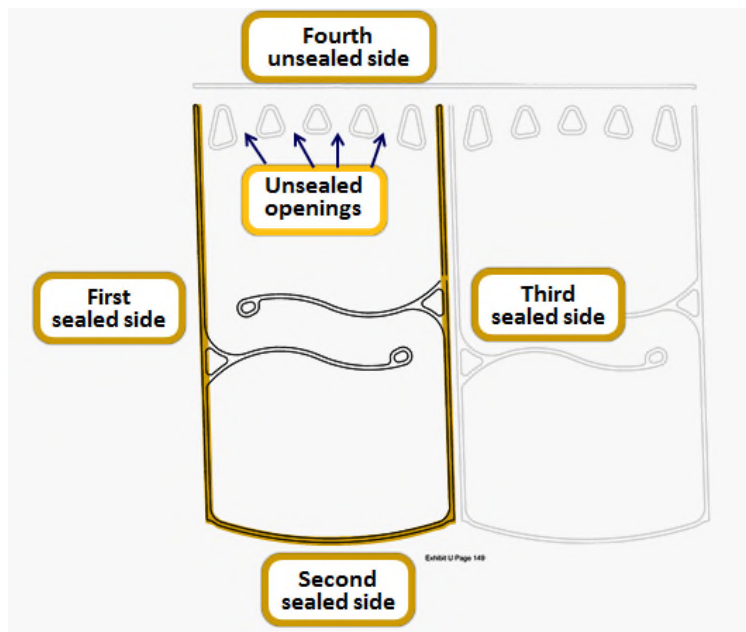


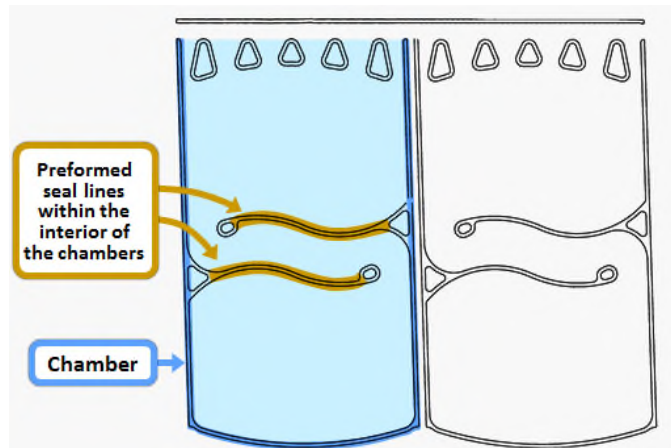
AirPouch Twin Pillows

27. As shown in the images 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 and AirPouch Twin Pillows have 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 chambers to be folded along a line extending through the seal line elements (for example, each chamber of the AirPouch FastWrap HD Bubbles and AirPouch Twin Pillows have preformed elements within the chambers that permit the chambers to be folded along the preformed seal line elements).



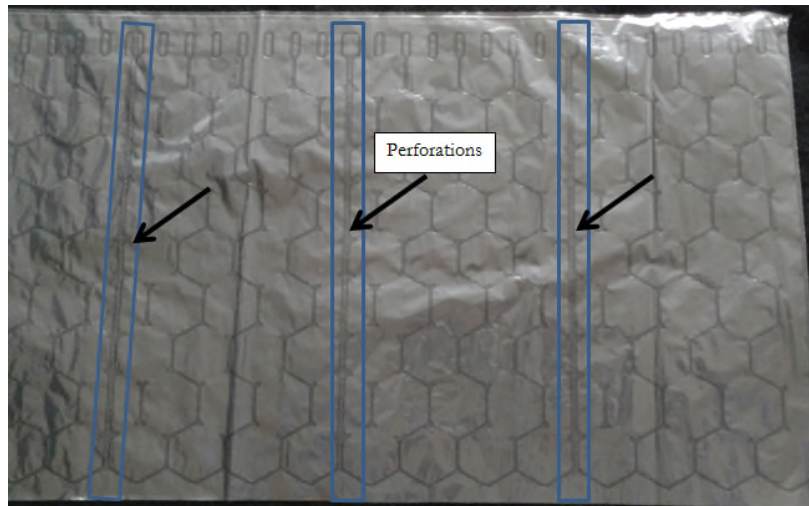
AirPouch FastWrap HD Bubbles





AirPouch Twin Pillows

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



AirPouch FastWrap HD Bubbles



AirPouch Twin Pillows

29. 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 CELL-O[®] air cushions for MINI PAK'R[®] machine, the POWER PAK'R[™] air cushions for POWER PAK'R[™] machine, the PRO PAK'R[™] air cushions for PRO PAK'R[™] machine, and the MINI PAK'R[™] air cushions for MINI PAK'R[™] machine with the '774 patent. Furthermore, Automated has had actual knowledge that its activities infringe the '774 patent since at least April 4, 2017, when FPI served a complaint filed in the Northern District of California on Automated setting out Automated's infringement of the '774 patent. Proof of Service of Complaint filed March 31, 2017, *Free-Flow Packaging Int'l, Inc. v. Automated Packaging Sys., Inc.*, No. 3:17-cv-01803-SK (N.D. Cal. April 12, 2017), ECF No. 16.

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

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

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

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

33. FPI incorporates by reference the allegations in paragraphs 1-32 above.

34. On April 14, 2015, the United States Patent & Trademark Office issued U.S. Patent No. 9,003,743 for "Apparatus for Inflating and Sealing Pillows in Packaging Cushions."

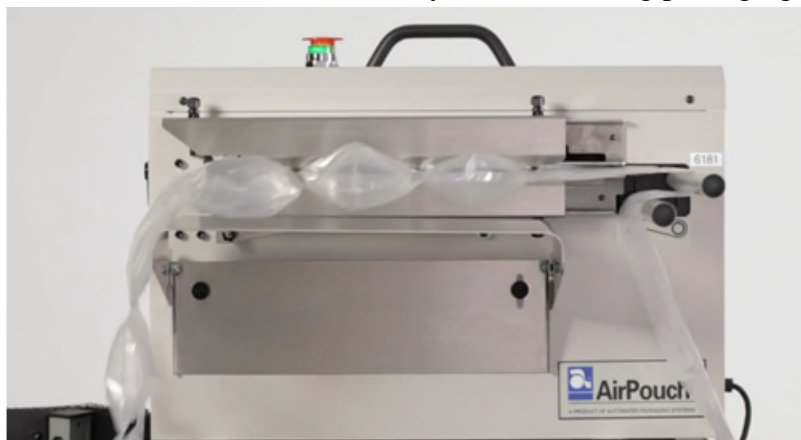
A true and correct copy of the '743 Patent is attached hereto as Exhibit B. By assignment from the inventors in May of 2009, FPI is the sole owner of the '743 Patent.

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

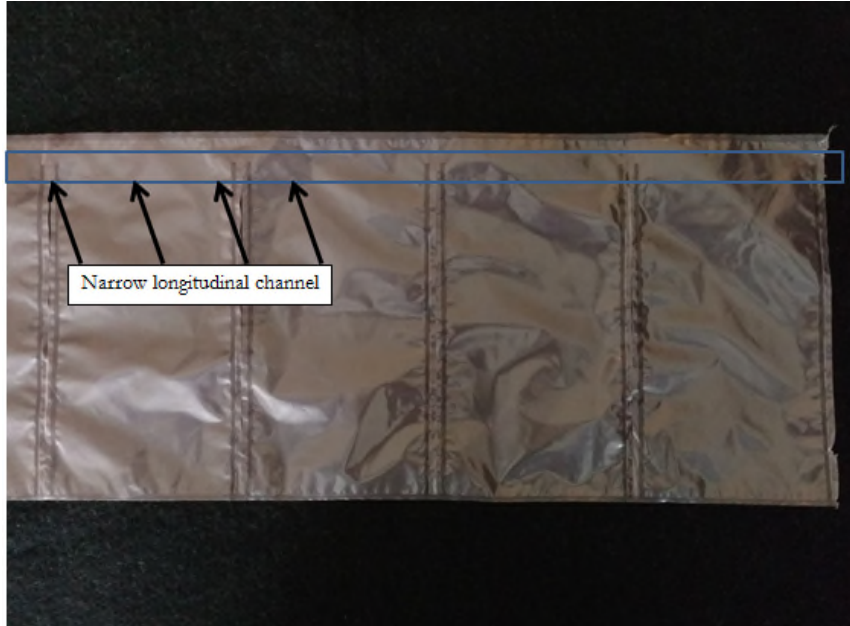
36. The claims of the ’743 Patent differ from the claims of the ’837 Patent at issue in this prior litigation. The ’743 Patent made a narrowing change to exclude perforations “separating each chamber or multiple chambers.” It further contains a “feed mechanism” limitation that was not present in the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

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

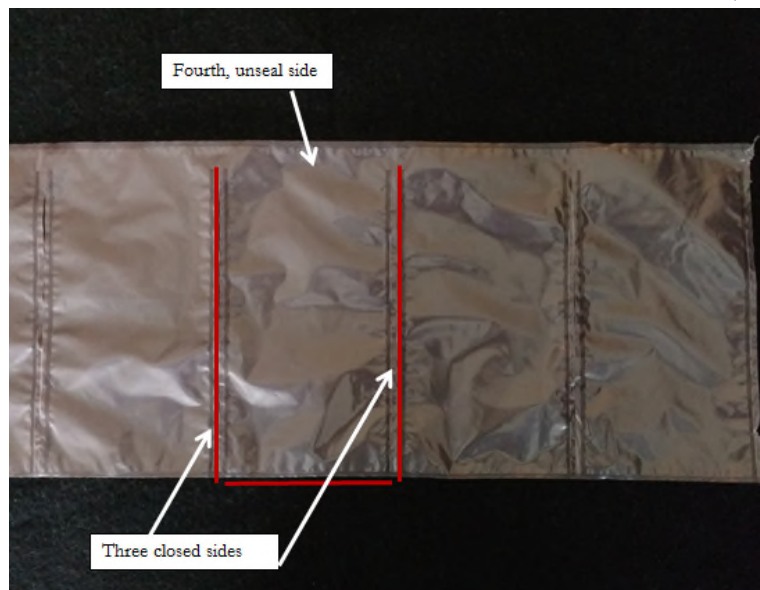
38. The Accused Automated System is a system for manufacturing air cushions for use as packaging dunnage (for example, the AirPouch[®] Express 3[™], as shown below, in combination with the Accused Automated Films is a system for making packaging dunnage).



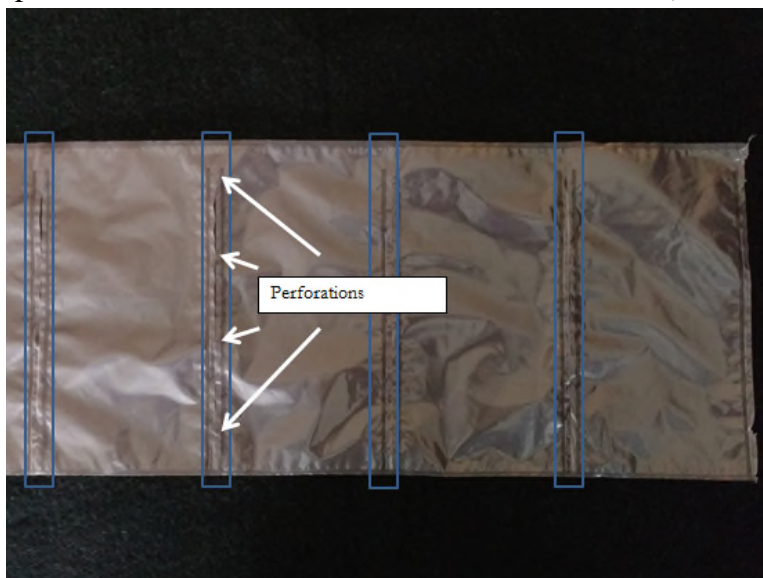
39. As shown in the image below, the Accused Automated System utilizes the Accused Automated EZ-Tear Webs, which are a longitudinally extending plastic film comprising a relatively narrow longitudinally extending channel that allows for inflation of the material (for example, the DuraClear 2000™ EZ-Tear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



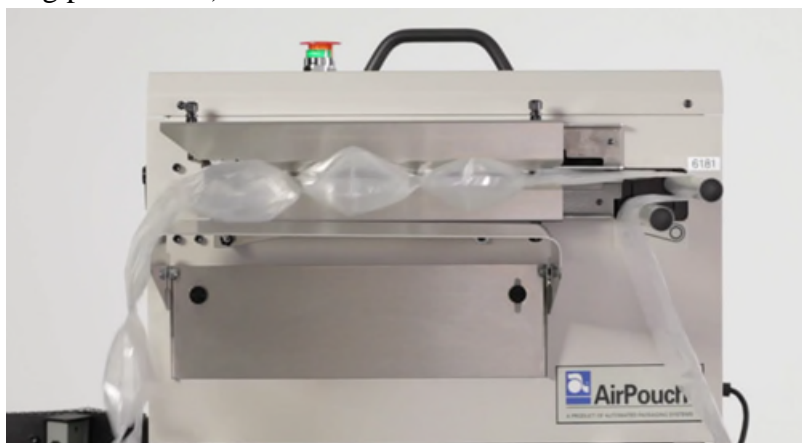
The Accused Automated EZ-Tear Webs have at least one row of generally rectangular presealed inflatable chambers each having three sides closed and a fourth side with an unsealed opening into the longitudinally extending channel (for example, as shown below, the DuraClear 2000™ EZ-Tear Pillows define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



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).

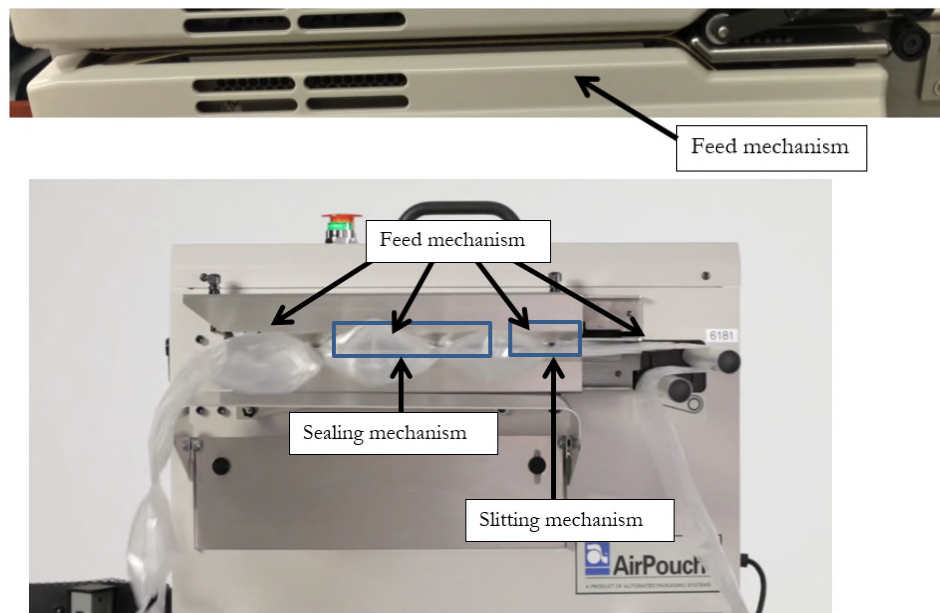


40. The Accused Automated System includes an inflation machine for inflating the inflatable chambers of the plastic film (for example, the AirPouch® Express 3™, as shown below, is a machine for inflating plastic film).

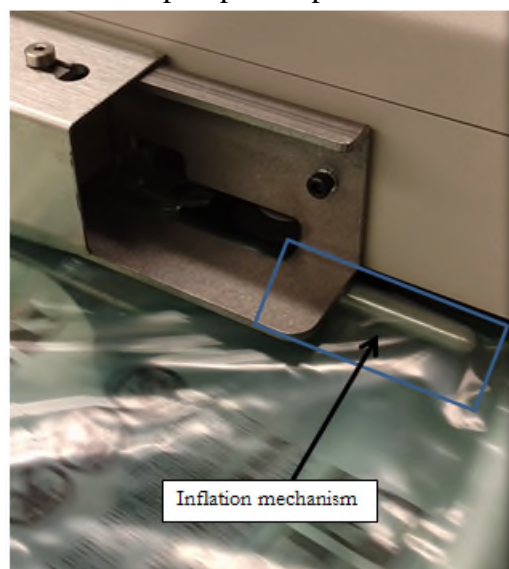


41. The Accused Automated System contains a feed mechanism that causes the plastic film to be gripped at or near the narrow longitudinally extending channel and drawn in a continuous and uninterrupted manner through inflation, sealing and slitting mechanisms in a planar path (for example, the AirPouch®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

mechanism that pulls in the film having a sealing and slitting mechanism in a planar path).



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

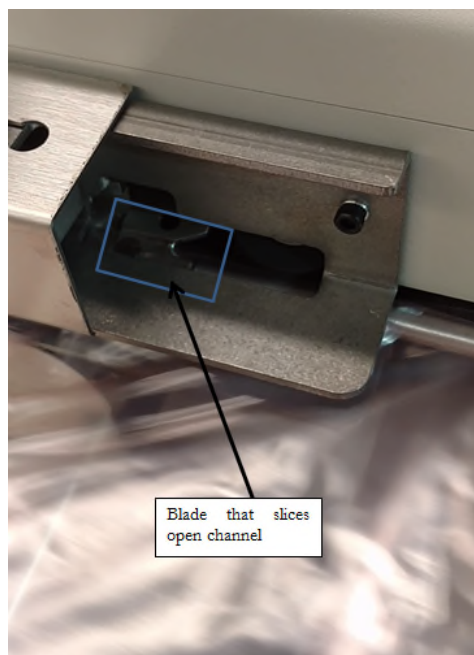


43. The Accused Automated System includes a sealing mechanism that comprises an electrically energized heating element that generates heat to be delivered to the inflation side of

one or more of the inflatable chambers to seal the unsealed opening and trap the inflation gas within the inflatable chambers as the plastic film is drawn through the sealing mechanism (for example, the AirPouch[®] Express 3[™], as shown below, heat seals the edge of the Accused Automated EZ-Tear Webs after they are filled and as they are drawn through the machine).



44. The Accused Automated System includes a slitting mechanism comprising a blade that slices open the relatively narrow longitudinally extending channel of the plastic film as the film is drawn through the slitting mechanism (for example, the AirPouch[®] Express 3[™], as shown below, slices open the narrow channel in the film with a blade as it is drawn through the machine).



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

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

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

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

PRAYER FOR RELIEF

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

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

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

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

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

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

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

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

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

JURY DEMAND

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

Dated: November 10, 2017

Respectfully submitted,

/s/ Kip Bollin

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Counsel for Plaintiff
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CERTIFICATE OF SERVICE

A copy of the foregoing was electronically filed with the Court this 10th day of November, 2017, and will be served upon counsel of record via the Court's electronic filing system.

/s/ Kip Bollin _____
Counsel for Plaintiff
Free-Flow Packaging International, Inc.