

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THE SHERWIN-WILLIAMS COMPANY,

Plaintiff / Counterclaim-Defendant,

v.

PPG INDUSTRIES, INC.,

Defendant / Counterclaim-Plaintiff.

Case No. 2:17-cv-01023-JFC

**THIRD AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT**

**JURY TRIAL DEMANDED**

Plaintiff The Sherwin-Williams Company (“Sherwin-Williams,” “Plaintiff”) hereby files this Third Amended Complaint, demands a jury trial, and alleges the following against Defendant PPG Industries, Inc. (“PPG” or “Defendant”):

**PARTIES**

1. Sherwin-Williams is a corporation organized and existing under the laws of the State of Ohio with its principal place of business located at 101 W. Prospect Ave., Cleveland, Ohio 44115. Sherwin-Williams recently acquired The Valspar Corporation and all its subsidiaries, including the packaging coating business of The Valspar Corporation.

2. On information and belief, PPG is a corporation organized under the laws of the State of Pennsylvania and has its principal place of business at One PPG Place, Pittsburgh, Pennsylvania 15222. PPG makes, sells, offers for sale, and/or uses coating compositions, including coating compositions for food and beverage containers, throughout the United States, including within this District.

**JURISDICTION AND VENUE**

3. This is a civil action for patent infringement arising under the patent laws of the

United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. § 271, which gives rise to the remedies specified under 35 U.S.C. §§ 281 and 283–285.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over PPG.

6. On information and belief, PPG offers to sell and sells coating compositions for food and beverage containers, including Innoval HPS, to United States manufacturers of beverage cans for use in coating beverage cans, and provides the manufacturers of beverage cans with instructions on how to apply the coating compositions, including Innoval HPS, to beverage cans.

7. On information and belief, such offers and sales are made, and such instructions are provided, by PPG to the can manufacturers who have domestic can manufacturing facility locations throughout the United States at which the coating compositions may be used to coat beverage cans, and with PPG's knowledge and intent that the coating compositions be so used to coat beverage cans.

8. On information and belief, and as explained in more detail below, when PPG sells and offers for sale coating compositions for food and beverage containers, including Innoval HPS, to manufacturers of beverage cans, PPG knows and intends that the manufacturers of beverage cans will (i) use such coating compositions, including Innoval HPS, to coat beverage cans, and (ii) sell such coated beverage cans, and thereby will directly infringe the patents asserted by Plaintiff in this action.

9. On information and belief, beverage cans coated with PPG's coating compositions, including Innoval HPS, that directly infringe and/or are made with methods that directly infringe

the patents asserted by Plaintiff in this action have been and will be offered for sale and/or sold throughout the United States, including within the State of Pennsylvania.

10. On information and belief, PPG knows and intends that beverage cans coated with PPG's coating compositions, including Innovel HPS, that infringe and/or are made with methods that infringe the patents asserted by Plaintiff in this action have been and will be offered for sale and/or sold throughout the United States, including within the State of Pennsylvania.

11. On information and belief, PPG is registered to do business in the State of Pennsylvania and maintains a registered agent for service of process in the State of Pennsylvania.

12. PPG conducts regular and substantial business in the State of Pennsylvania, including at least by maintaining its headquarters in this District, maintaining retail store locations in the State, selling and offering for sale products through such retail locations in the State, and selling and offering for sale products through other authorized retailers located in the State.

13. PPG has availed itself of the courts of the State of Pennsylvania. On information and belief, PPG has been a party to lawsuits and appeals in the State of Pennsylvania, including this case in which PPG has asserted Counterclaims.

14. On information and belief, PPG is incorporated in the State of Pennsylvania.

15. Venue is proper in this judicial district under 28 U.S.C. § 1400.

#### **THE PATENTS-IN-SUIT**

16. On December 31, 2013, the United States Patent and Trademark Office ("PTO") duly and legally issued U.S. Patent No. 8,617,663 (the "'663 patent"), entitled "Coating Compositions for Cans and Methods of Coating." A true and accurate copy of the '663 patent is attached hereto as Exhibit A.

17. On September 15, 2014, the PTO duly and legally issued U.S. Patent No. 8,835,012 (the “’012 patent”), entitled “Coating Compositions for Aluminum Beverage Cans and Methods of Coating Same.” A true and accurate copy of the ’012 patent is attached hereto as Exhibit B.

18. On January 26, 2016, the PTO duly and legally issued U.S. Patent No. 9,242,763 (the “’763 patent”), entitled “Coating Compositions for Aluminum Beverage Cans and Methods of Coating Same.” A true and accurate copy of the ’763 patent is attached hereto as Exhibit C.

19. On August 16, 2016, the PTO duly and legally issued U.S. Patent No. 9,415,900 (the “’900 patent”), entitled “Coating Compositions for Aluminum Beverage Cans and Methods of Coating Same.” A true and accurate copy of the ’900 patent is attached hereto as Exhibit D.

20. On January 9, 2018, the PTO duly and legally issued U.S. Patent No. 9,862,854 (the “’854 patent”), entitled “Coating Compositions for Aluminum Beverage Cans and Methods of Coating Same.” A true and accurate copy of the ’854 patent is attached hereto as Exhibit E.

21. Through its acquisition of Valspar Sourcing, Sherwin-Williams became the owner of the ’663 patent, the ’012 patent, the ’763 patent, the ’900 patent, and the ’854 patent (collectively, the “Asserted Patents”).

## **FIRST CAUSE OF ACTION**

### **Infringement of the ’663 patent**

22. Plaintiff realleges and incorporates paragraphs 1–21 as though fully set forth herein.

23. PPG had knowledge of the application that issued as the ’663 patent since around the time of its publication on March 14, 2013, and has had knowledge of the ’663 patent since around the time the patent issued on December 31, 2013.

24. PPG has directly infringed at least claim 16 of the ’663 patent.

25. On information and belief, PPG has spray-applied its Innovel HPS coating to the interior of at least one beverage can in the United States.

26. PPG has actively induced and actively induces others to infringe at least claim 16 of the '663 patent, in violation of 35 U.S.C. § 271(b).

27. PPG has sold its Innovel HPS coating to customers in the United States, including manufacturers of beverage cans.

28. Despite PPG's knowledge of the '663 patent and knowledge of Plaintiff's allegations of infringement, PPG is actively inducing others in the United States to use and perform methods covered by one or more claims of the '663 patent. Such methods use and involve, for example, application of coating compositions, including PPG's Innovel HPS product(s), to beverage cans.

29. PPG's customers, including manufacturers of beverage cans in the United States, on information and belief, are directly infringing the '663 patent, including at least claim 16, through their use and performance of methods covered by one or more claims of the '663 patent, including methods using and involving application of the Innovel HPS product(s) to beverage cans.

30. Claim 16 of the '663 patent recites:

A method, comprising the steps of: (a) providing an aqueous coating composition that includes a latex polymer that is substantially free of bound BPA and aromatic glycidyl ether compounds and is made without using PVC compounds, wherein the latex polymer is formed by emulsion polymerizing a mixture of ethylenically unsaturated monomers comprising 0.1 to 30 weight percent oxirane functional group-containing monomer, based on the weight of the mixture, in the presence of an acid- or anhydride-functional polymer; and (b) spray applying the coating composition to an interior surface of a food or beverage can or a portion thereof.

31. Innovel HPS is an aqueous coating composition that includes a latex polymer that is substantially free of bound BPA and aromatic glycidyl ether compounds and is made without using PVC compounds, wherein the latex polymer is formed by emulsion polymerizing a mixture of ethylenically unsaturated monomers comprising 0.1 to 30 weight percent oxirane functional

group-containing monomer, based on the weight of the mixture, in the presence of an acid- or anhydride-functional polymer.

32. PPG's customers, including manufacturers of beverage cans in the United States, on information and belief, are providing Innoval HPS into their manufacturing processes and spray applying the Innoval HPS coating composition to an interior surface of a food or beverage can or a portion thereof, and are thereby directly infringing at least claim 16 of the '663 patent.

33. PPG knowingly induces infringement of the '663 patent, including at least claim 16, and does so with specific intent to induce infringement, and/or with willful blindness to the possibility that its acts induce infringement, including through activities relating to selling, marketing, advertising, promotion, support, and distribution of coating compositions, including the Innoval HPS product(s).

34. PPG publishes materials that encourage and instruct its customers, including manufacturers of beverage cans, to use the Innoval HPS product(s) on cans in a manner that directly infringes the '663 patent, including, for example, press releases entitled "PPG Packaging Coatings launches cutting-edge INNOVEL HPS coatings," attached hereto as Exhibit F; "PPG reports steadily increasing use of INNOVEL HPS beverage-can spray coatings," attached hereto as Exhibit G; and "PPG to highlight new INNOVEL beverage-can coatings at Guangzhou trade show," attached hereto as Exhibit H. These materials can be found, as of the date of the filing of the original Complaint, at the URLs <http://corporate.ppg.com/Media/Newsroom/2014/PPG-Packaging-Coatings-launches-cutting-edge-INNOV>; <http://corporate.ppg.com/Media/Newsroom/2015/PPG-reports-steadily-increasing-use-of-INNOVEL-HPS>; and <http://corporate.ppg.com/Media/Newsroom/2015/PPG-highlights-new-INNOVEL-coatings-Guangzhou2015>, respectively.

35. The press release entitled “PPG Packaging Coatings launches cutting-edge INNOVEL HPS coatings” states that PPG’s Innoval HPS product(s) are “internal protective spray lacquers for the beverage can industry” and “ha[ve] been approved for use on aluminum and steel beverage cans.” The press release entitled “PPG reports steadily increasing use of INNOVEL HPS beverage-can spray coatings” states,

Innoval HPS products use water-based Bisphenol A non-intent (BPA-NI, or with no BPA intentionally added) coatings technology that makes them compliant with applicable European and United States regulations, including the recent national BPA legislation in France. Beyond meeting government regulations, Innoval HPS coatings have been shown to satisfy the needs of beverage industry as well.

The same press release also states that Innoval HPS coatings

run efficiently on beverage-can production lines with little need for line changes or disruptions and strong support from highly experienced PPG technical and customer-service teams. Through a SECURE LAUNCH™ process, PPG provides beverage-can makers with hands-on training to minimize changeover time as they replace traditional epoxy-based coatings with new Innoval HPS coatings. The PPG technical-support team also works with each can maker to evaluate equipment and optimize the conversion process.

“PPG’s goal is to provide its customers with the best product to protect beverage cans and the best service, allowing them to convert to using Innoval HPS coatings with no disruption to their operations”...

The press release entitled “PPG to highlight new INNOVEL beverage-can coatings at Guangzhou trade show” states,

INNOVEL HPS spray coatings for aluminum and steel beverage cans...provide[] flavor-neutral properties as well as effective pasteurization and retort capabilities, making them suitable for a broad range of filling products. Innoval HPS coatings are approved by all major brands, and they are commercially and globally available. Innoval HPS coatings cover all weight specifications and run efficiently on can makers’ lines.

36. PPG actively publicizes such promotional and instructional materials for coating compositions, including the Innoval HPS product(s), through numerous means, including through the website [www.corporate.ppg.com](http://www.corporate.ppg.com).

37. On information and belief, PPG provides its customers, including manufacturers of beverage cans, with additional instructions that direct the customers to use coating compositions, including the Innoval HPS product(s), in a manner that directly infringes the '663 patent, including by applying Innoval HPS to beverage cans as claimed in the '663 patent. Such instructions include, for example, application data sheets and/or product data sheets.

38. On information and belief, PPG also provides its customers, including manufacturers of beverage cans, with assistance and direction from sales and/or service personnel who direct the customers to use coating compositions, including the Innoval HPS product(s), in a manner that directly infringes the '663 patent, including by applying Innoval HPS to beverage cans as claimed in the '663 patent.

39. PPG has contributed and contributes to others' infringement of at least claim 16 of the '663 patent, in violation of 35 U.S.C. § 271(c).

40. Despite PPG's knowledge of the '663 patent and knowledge of Plaintiff's allegations of infringement, PPG is contributing to the infringement of the '663 patent by selling and/or offering for sale in the United States products used by others to perform methods covered by one or more claims of the '663 patent. Such sold and/or offered for sale products include coating compositions, including the Innoval HPS product(s). Such methods use and involve, for example, application of coating compositions, including PPG's Innoval HPS product(s), to beverage cans. The sold and/or offered for sale coating compositions are material to practicing the '663 patent, are especially made and/or adapted for use in infringing the '663 patent, and are not staple articles or commodities of commerce suitable for substantial noninfringing use.

41. Materials PPG publishes, for example, demonstrate that its coating compositions, including the Innoval HPS product(s), are specifically made and/or adapted for application to

beverage cans, for infringement of the '663 patent. Such materials include press releases entitled "PPG Packaging Coatings launches cutting-edge INNOVEL HPS coatings," attached hereto as Exhibit F; "PPG reports steadily increasing use of INNOVEL HPS beverage-can spray coatings," attached hereto as Exhibit G; and "PPG to highlight new INNOVEL beverage-can coatings at Guangzhou trade show," attached hereto as Exhibit H. These materials can be found, as of the date of the filing of the original Complaint, at the URLs <http://corporate.ppg.com/Media/Newsroom/2014/PPG-Packaging-Coatings-launches-cutting-edge-INNOV>; <http://corporate.ppg.com/Media/Newsroom/2015/PPG-reports-steadily-increasing-use-of-INNOVEL-HPS>; and <http://corporate.ppg.com/Media/Newsroom/2015/PPG-highlights-new-INNOVEL-coatings-Guangzhou2015>, respectively. The press release entitled "PPG Packaging Coatings launches cutting-edge INNOVEL HPS coatings," for example, states that PPG's Innoval HPS product(s) are "internal protective spray lacquers for the beverage can industry" and "ha[ve] been approved for use on aluminum and steel beverage cans." PPG's customers, including manufacturers of beverage cans, apply PPG's coating compositions, including the Innoval HPS product(s), to beverage cans, as PPG directs and instructs them to do, and do not use the coating compositions in a way that is a substantial non-infringing use.

42. PPG's customers, on information and belief, are directly infringing the '663 patent, including at least claim 16, through their use and performance of methods covered by one or more claims of the '663 patent, including methods using and involving application of the Innoval HPS product(s) to beverage cans.

43. Claim 16 of the '663 patent recites:

A method, comprising the steps of: (a) providing an aqueous coating composition that includes a latex polymer that is substantially free of bound BPA and aromatic glycidyl ether compounds and is made without using PVC compounds, wherein the latex polymer is formed by emulsion polymerizing a mixture of ethylenically

unsaturated monomers comprising 0.1 to 30 weight percent oxirane functional group-containing monomer, based on the weight of the mixture, in the presence of an acid- or anhydride-functional polymer; and (b) spray applying the coating composition to an interior surface of a food or beverage can or a portion thereof.

44. Innoval HPS is an aqueous coating composition that includes a latex polymer that is substantially free of bound BPA and aromatic glycidyl ether compounds and is made without using PVC compounds, wherein the latex polymer is formed by emulsion polymerizing a mixture of ethylenically unsaturated monomers comprising 0.1 to 30 weight percent oxirane functional group-containing monomer, based on the weight of the mixture, in the presence of an acid- or anhydride-functional polymer.

45. PPG's customers, including manufacturers of beverage cans, on information and belief, are providing Innoval HPS into their manufacturing process(es) and spray applying the Innoval HPS coating composition to an interior surface of a food or beverage can or a portion thereof, and are thereby directly infringing at least claim 16 of the '663 patent.

46. On information and belief, PPG knowingly contributes to infringement of the '663 patent, including at least claim 16.

47. At least as of the filing of the original Complaint on May 23, 2016, PPG has had knowledge, and/or is willfully blind to the facts that, its coating compositions, including the Innoval HPS product(s), are material to practicing the '663 patent, specifically made and/or adapted for infringement of the '663 patent, and not staple articles of commerce suitable for substantial noninfringing use. At least as of the filing of the original Complaint on May 23, 2016, PPG also has had knowledge, and/or is willfully blind to the fact that, its selling and offering to sell coating compositions, including the Innoval HPS product(s), contribute to PPG's customers and others performing methods covered by one or more claims of the '663 patent.

48. PPG's infringement of the '663 patent has been and continues to be willful.

49. As alleged above, PPG knew of the '663 patent shortly after the date the patent issued on December 31, 2013. PPG also knew it was directly and indirectly infringing the '663 patent when it started to make, use, sell and/or import Innovel HPS in the United States. Moreover, PPG had further notice of its infringement of the '663 patent when it was served with the initial Complaint in this action.

50. PPG has previously recognized that with respect to patents owned by Sherwin-Williams, PPG needed to “confirm[] its freedom to operate and its legal rights with respect to its Innovel HPS product.” *PPG Indus., Inc. v. Valspar Sourcing, Inc.*, Appeal No. 2016-1406, Dkt. 40 at 2 (Nov. 15, 2016).

51. In response to its recognized need for a “freedom to operate,” PPG filed *inter partes* reexamination requests challenging the validity of Sherwin-Williams’ U.S. Patent Nos. 8,092,876 (the “’876 patent”) and 7,592,047 (the “’047 patent”). The ’876 patent and the ’047 patent are both related to the ’663 patent. Specifically, the ’663 patent claims priority to the ’047 patent, and the ’876 patent is a continuation-in-part of the ’047 patent.

52. PPG also filed oppositions to related Sherwin-Williams patents in Europe, including to European Patent Nos. EP1819789, EP2420541, EP2420542, which all claim priority to U.S. Provisional Patent Application No. 60/620,639 to which all the Patents-in-Suit claim priority.

53. PPG, however, did not seek to challenge the validity of the ’663 patent before it began making, using, selling and/or importing Innovel HPS in the United States.

54. Documents produced by PPG in this case confirm that PPG’s Innovel HPS directly and indirectly infringes numerous asserted claims. To date, PPG has not provided any specific bases for asserting non-infringement.

55. Through the initial stages of this litigation, the sole defense PPG has focused on to justify its infringing conduct relates to PPG's own internal "Perez prior art." *E.g.*, Dkt. 35 at 4-5, 11, 17. PPG has not advanced any other specific invalidity arguments.

56. PPG's reliance on the alleged "Perez prior art" to provide a freedom to operate is not reasonable, as the "Perez prior art" is different from the accused Innoval HPS coating and does not have all of the necessary characteristics of a coating composition that is used to coat the interior of a can.

57. For example, because the "Perez prior art" does not disclose a mixture of ethylenically unsaturated monomers comprising at least 40 weight percent of alkyl (meth)acrylates and at least 20 weight percent of vinyl aromatic compounds it was not reasonable for PPG to rely on it for the claims of the '663 patent that require such a mixture of ethylenically unsaturated monomers. *See, e.g.*, '663 patent at claim 23.

58. Despite knowing it infringed the '663 patent and without a reasonable invalidity argument, PPG launched Innoval HPS in the United States.

59. Moreover, PPG continues to escalate its sales efforts of Innoval HPS in the United States in disregard of Sherwin-Williams' '663 patent rights. For example, PPG undertook a process to "Re-Launch" Innoval HPS in or around September 2016, well after the filing of the Complaint in this Action, and despite PPG's failure to address its freedom-to-operate concerns. *See* PPG1429CASE013654.

60. Because PPG had knowledge of Sherwin-Williams' '663 patent rights and proceeded to infringe and increase its infringement in an egregious manner beyond typical infringement, PPG's infringement is willful.

\* \* \*

61. Unless and until enjoined by this Court, PPG will continue to directly infringe as well as induce and contribute to infringement of the '663 patent. PPG's infringing acts are causing and will continue to cause Sherwin-Williams irreparable harm, for which there is no adequate remedy at law. Under 35 U.S.C. § 283, Sherwin-Williams is entitled to a permanent injunction against further infringement.

## **SECOND CAUSE OF ACTION**

### **Infringement of the '012 patent**

62. Plaintiff realleges and incorporates paragraphs 1–61 as though fully set forth herein.

63. PPG had knowledge of the application that issued as the '012 patent since around the time of its publication on August 1, 2013, and has had knowledge of the '012 patent since around the time the patent issued on September 16, 2014.

64. PPG has directly infringed at least claim 80 of the '012 patent.

65. On information and belief, PPG has coated at least one aluminum beverage can with PPG's Innoval HPS coating in the United States.

66. PPG has actively induced and actively induces others to infringe at least claim 80 of the '012 patent, in violation of 35 U.S.C. § 271(b).

67. PPG has sold its Innoval HPS coating to customers in the United States, including manufacturers of beverage cans.

68. Despite PPG's knowledge of the '012 patent and knowledge of Plaintiff's allegations of infringement, PPG is actively inducing others in the United States to make, use, offer for sale, sell and/or import into the United States articles of manufacture, and/or use and perform methods, covered by one or more claims of the '012 patent. Such articles of manufacture include, for example, beverage cans on which the Innoval HPS product(s) have been applied. Such

methods use and involve, for example, application of coating compositions, including PPG's Innovel HPS product(s), to beverage cans.

69. PPG's customers, including manufacturers of beverage cans in the United States, on information and belief, are directly infringing the '012 patent, including at least claim 80, through their making, using, offering for sale, selling and/or importing into the United States articles of manufacture covered by one or more claims of the '012 patent, including beverage cans on which the Innovel HPS product(s) have been applied.

70. Claim 80 of the '012 patent recites:

A coated article comprising: an aluminum beverage can including a body portion and a bottom end portion; and a cured coating on an interior surface of the aluminum beverage can, wherein the coating is formed from a coating composition that includes an emulsion polymerized latex polymer that comprises a reaction product of an ethylenically unsaturated monomer component polymerized in the presence of an aqueous dispersion of a salt of an acid- or anhydride-functional polymer, wherein the ethylenically unsaturated monomer component includes an oxirane group-containing monomer, and wherein the coating composition is made without using PVC compounds, BPA, or aromatic glycidyl ether compounds.

71. Innovel HPS is a coating composition that includes an emulsion polymerized latex polymer that comprises a reaction product of an ethylenically unsaturated monomer component polymerized in the presence of an aqueous dispersion of a salt of an acid- or anhydride-functional polymer, wherein the ethylenically unsaturated monomer component includes an oxirane group-containing monomer, and wherein the coating composition is made without using PVC compounds, BPA, or aromatic glycidyl ether compounds.

72. PPG's customers, including manufacturers of beverage cans in the United States, on information and belief, are making, using, selling, offering for sale and/or importing into the United States an aluminum beverage can including a body portion and a bottom end portion; and a cured coating on an interior surface of the aluminum beverage can, wherein the coating is formed

from a coating composition Innoval HPS, and are thereby directly infringing at least claim 80 of the '012 patent.

73. On information and belief, PPG knowingly induces infringement of the '012 patent, including at least claim 80, and does so with specific intent to induce infringement, and/or with willful blindness to the possibility that its acts induce infringement, including through activities relating to selling, marketing, advertising, promotion, support, and distribution of coating compositions, including the Innoval HPS product(s).

74. PPG publishes materials that encourage and instruct its customers, including manufacturers of beverage cans, to use the Innoval HPS product(s) on cans in a manner that directly infringes the '012 patent, including, for example, press releases entitled "PPG Packaging Coatings launches cutting-edge INNOVEL HPS coatings," attached hereto as Exhibit F; "PPG reports steadily increasing use of INNOVEL HPS beverage-can spray coatings," attached hereto as Exhibit G; and "PPG to highlight new INNOVEL beverage-can coatings at Guangzhou trade show," attached hereto as Exhibit H. These materials can be found, as of the date of the filing of the original Complaint, at the URLs <http://corporate.ppg.com/Media/Newsroom/2014/PPG-Packaging-Coatings-launches-cutting-edge-INNOV>; <http://corporate.ppg.com/Media/Newsroom/2015/PPG-reports-steadily-increasing-use-of-INNOVEL-HPS>; and <http://corporate.ppg.com/Media/Newsroom/2015/PPG-highlights-new-INNOVEL-coatings-Guangzhou2015>, respectively.

75. The press release entitled "PPG Packaging Coatings launches cutting-edge INNOVEL HPS coatings" states that PPG's Innoval HPS product(s) are "internal protective spray lacquers for the beverage can industry" and "ha[ve] been approved for use on aluminum and steel beverage cans." The press release entitled "PPG reports steadily increasing use of INNOVEL HPS beverage-can spray coatings" states,

Innovel HPS products use water-based Bisphenol A non-intent (BPA-NI, or with no BPA intentionally added) coatings technology that makes them compliant with applicable European and United States regulations, including the recent national BPA legislation in France. Beyond meeting government regulations, Innovel HPS coatings have been shown to satisfy the needs of beverage industry as well.

The same press release also states that Innovel HPS coatings

run efficiently on beverage-can production lines with little need for line changes or disruptions and strong support from highly experienced PPG technical and customer-service teams. Through a SECURE LAUNCH™ process, PPG provides beverage-can makers with hands-on training to minimize changeover time as they replace traditional epoxy-based coatings with new Innovel HPS coatings. The PPG technical-support team also works with each can maker to evaluate equipment and optimize the conversion process.

“PPG’s goal is to provide its customers with the best product to protect beverage cans and the best service, allowing them to convert to using Innovel HPS coatings with no disruption to their operations”...

The press release entitled “PPG to highlight new INNOVEL beverage-can coatings at Guangzhou trade show” states,

INNOVEL HPS spray coatings for aluminum and steel beverage cans...provide[] flavor-neutral properties as well as effective pasteurization and retort capabilities, making them suitable for a broad range of filling products. Innovel HPS coatings are approved by all major brands, and they are commercially and globally available. Innovel HPS coatings cover all weight specifications and run efficiently on can makers’ lines.

76. PPG actively publicizes such promotional and instructional materials for coating compositions, including the Innovel HPS product(s), through numerous means, including through the website [www.corporate.ppg.com](http://www.corporate.ppg.com).

77. On information and belief, PPG provides its customers, including manufacturers of beverage cans, with additional instructions that direct the customers to include coating compositions, including the Innovel HPS product(s), in articles of manufacture in a manner that directly infringes the ’012 patent, including by applying Innovel HPS to beverage cans as claimed

in the '012 patent. Such instructions include, for example, application data sheets and/or product data sheets.

78. On information and belief, PPG also provides its customers, including manufacturers of beverage cans, with assistance and direction from sales and/or service personnel who direct the customers to include coating compositions, including the Innoval HPS product(s), in articles of manufacture in a manner that directly infringes the '012 patent, including by applying Innoval HPS to beverage cans as claimed in the '012 patent.

79. PPG has contributed and contributes to others' infringement of at least claim 80 of the '012 patent, in violation of 35 U.S.C. § 271(c).

80. Despite PPG's knowledge of the '012 patent and knowledge of Plaintiff's allegations of infringement, PPG is contributing to the infringement of the '012 patent by selling and/or offering for sale in the United States products that are components of articles of manufacture, and/or are used to perform methods, covered by one or more claims of the '012 patent. Such sold and/or offered for sale products include coating compositions, including the Innoval HPS product(s). Such articles of manufacture include, for example, beverage cans on which the Innoval HPS product(s) have been applied. Such methods use and involve, for example, application of coating compositions, including PPG's Innoval HPS product(s), to beverage cans. The sold and/or offered for sale coating compositions constitute a material part of the invention(s) of the '012 patent, are especially made and/or adapted for use in infringing the '012 patent, and are not staple articles or commodities of commerce suitable for substantial noninfringing use.

81. Materials PPG publishes, for example, demonstrate that its coating compositions, including the Innoval HPS product(s), are specifically made and/or adapted for application to beverage cans, for infringement of the '012 patent. Such materials include press releases entitled

“PPG Packaging Coatings launches cutting-edge INNOVEL HPS coatings,” attached hereto as Exhibit F; “PPG reports steadily increasing use of INNOVEL HPS beverage-can spray coatings,” attached hereto as Exhibit G; and “PPG to highlight new INNOVEL beverage-can coatings at Guangzhou trade show,” attached hereto as Exhibit H. These materials can be found, as of the date of the filing of the original Complaint, at the URLs <http://corporate.ppg.com/Media/Newsroom/2014/PPG-Packaging-Coatings-launches-cutting-edge-INNOV>; <http://corporate.ppg.com/Media/Newsroom/2015/PPG-reports-steadily-increasing-use-of-INNOVEL-HPS>; and <http://corporate.ppg.com/Media/Newsroom/2015/PPG-highlights-new-INNOVEL-coatings-Guangzhou2015>, respectively. The press release entitled “PPG Packaging Coatings launches cutting-edge INNOVEL HPS coatings,” for example, states that PPG’s Innoval HPS product(s) are “internal protective spray lacquers for the beverage can industry” and “ha[ve] been approved for use on aluminum and steel beverage cans.” PPG’s customers, including manufacturers of beverage cans, apply PPG’s coating compositions, including the Innoval HPS product(s), to beverage cans, as PPG directs and instructs them to do, and do not use the coating compositions in a way that is a substantial non-infringing use.

82. PPG’s customers, including manufacturers of beverage cans, on information and belief, are directly infringing the ’012 patent, including at least claim 80, through their making, using, selling, offering for sale, and/or importing into the United States articles of manufacture, and/or use and performance of methods, covered by one or more claims of the ’012 patent, including, for example, by making, using, selling, offering for sale, and/or importing into the United States beverage cans on which the Innoval HPS product(s) have been applied.

83. Claim 80 of the ’012 patent recites:

A coated article comprising: an aluminum beverage can including a body portion and a bottom end portion; and a cured coating on an interior surface of the

aluminum beverage can, wherein the coating is formed from a coating composition that includes an emulsion polymerized latex polymer that comprises a reaction product of an ethylenically unsaturated monomer component polymerized in the presence of an aqueous dispersion of a salt of an acid- or anhydride-functional polymer, wherein the ethylenically unsaturated monomer component includes an oxirane group-containing monomer, and wherein the coating composition is made without using PVC compounds, BPA, or aromatic glycidyl ether compounds.

84. Innovel HPS is a coating composition that includes an emulsion polymerized latex polymer that comprises a reaction product of an ethylenically unsaturated monomer component polymerized in the presence of an aqueous dispersion of a salt of an acid- or anhydride-functional polymer, wherein the ethylenically unsaturated monomer component includes an oxirane group-containing monomer, and wherein the coating composition is made without using PVC compounds, BPA, or aromatic glycidyl ether compounds.

85. PPG's customers, including manufacturers of beverage cans, on information and belief, are making, using, selling, offering for sale, and/or importing into the United States an aluminum beverage can including a body portion and a bottom end portion; and a cured coating on an interior surface of the aluminum beverage can, wherein the coating is formed from a coating composition, Innovel HPS, and are thereby directly infringing at least claim 80 of the '012 patent.

86. On information and belief, PPG knowingly contributes to infringement of the '012 patent, including at least claim 80.

87. At least as of the filing of the original Complaint on May 23, 2016, PPG has had knowledge, and/or is willfully blind to the facts that, its coating compositions, including the Innovel HPS product(s), constitute a material part of the invention(s) of the '012 patent, are specifically made and/or adapted for infringement of the '012 patent, and are not staple articles of commerce suitable for substantial noninfringing use. At least as of the filing of the original Complaint on May 23, 2016, PPG also has had knowledge, and/or is willfully blind to the fact that, its selling and offering to sell coating compositions, including the Innovel HPS product(s),

contribute to PPG's customers and others making, using, selling, offering to sell and/or importing into the United States articles of manufacture, and/or performing methods, covered by one or more claims of the '012 patent.

88. PPG's infringement of the '012 patent has been and continues to be willful.

89. As alleged above, PPG knew of the '012 patent shortly after the date the patent issued on September 16, 2014. PPG also knew it was directly and indirectly infringing the '012 patent when it started to make, use, sell and/or import Innovel HPS in the United States. Moreover, PPG had further notice of its infringement of the '012 patent when it was served with the initial Complaint in this action.

90. PPG has previously recognized that with respect to patents owned by Sherwin-Williams, PPG needed to "confirm[] its freedom to operate and its legal rights with respect to its Innovel HPS product." *PPG Indus., Inc. v. Valspar Sourcing, Inc.*, Appeal No. 2016-1406, Dkt. 40 at 2 (Nov. 15, 2016).

91. In response to its recognized need for a "freedom to operate," PPG filed *inter partes* reexamination requests challenging the validity of Sherwin-Williams' '876 patent and '047 patent. The '876 patent and the '047 patent are both related to the '012 patent. Specifically, the '012 patent claims priority to the '047 patent, and the '876 patent is a continuation-in-part of the '047 patent.

92. PPG also filed oppositions to related Sherwin-Williams patents in Europe, including to European Patent Nos. EP1819789, EP2420541, EP2420542, which all claim priority to U.S. Provisional Patent Application No. 60/620,639 to which all the Patents-in-Suit claim priority.

93. PPG, however, did not seek to challenge the validity of the '012 patent before it began making, using, selling and/or importing Innovel HPS in the United States.

94. Documents produced by PPG in this case confirm that PPG's Innovel HPS directly and indirectly infringes numerous asserted claims. To date, PPG has not provided any specific bases for asserting non-infringement.

95. Through the initial stages of this litigation, the sole defense PPG has focused on to justify its infringing conduct relates to PPG's own internal "Perez prior art." *E.g.*, Dkt. 35 at 4-5, 11, 17. PPG has not advanced any other specific invalidity arguments.

96. PPG's reliance on the alleged "Perez prior art" to provide a freedom to operate is not reasonable, as the "Perez prior art" is different from the accused Innovel HPS coating and does not have all of the necessary characteristics of a coating composition that is used to coat the interior of a can.

97. For example, because the "Perez prior art" does not disclose an organic-solution polymerized acid- or anhydride-functional polymer it was not reasonable for PPG to rely on it for the claims of the '012 patent that require such an acid- or anhydride-functional polymer. *See, e.g.*, '012 patent at claims 6, 7.

98. Despite knowing it infringed the '012 patent and without a reasonable invalidity argument, PPG launched Innovel HPS in the United States.

99. Moreover, PPG continues to escalate its sales efforts of Innovel HPS in the United States in disregard of Sherwin-Williams' '012 patent rights. For example, PPG undertook a process to "Re-Launch" Innovel HPS in or around September 2016, well after the filing of the Complaint in this Action, and despite PPG's failure to address its freedom-to-operate concerns. *See* PPG1429CASE013654.

100. Because PPG had knowledge of Sherwin-Williams' '012 patent rights and proceeded to infringe and increase its infringement in an egregious manner beyond typical infringement, PPG's infringement is willful.

\* \* \*

101. Unless and until enjoined by this Court, PPG will continue to directly infringe as well as induce and contribute to infringement of the '012 patent. PPG's infringing acts are causing and will continue to cause Sherwin-Williams irreparable harm, for which there is no adequate remedy at law. Under 35 U.S.C. § 283, Sherwin-Williams is entitled to a permanent injunction against further infringement.

### **THIRD CAUSE OF ACTION**

#### **Infringement of the '763 patent**

102. Plaintiff realleges and incorporates paragraphs 1–101 as though fully set forth herein.

103. PPG had knowledge of the application that issued as the '763 patent since around the time of its publication on January 29, 2015, and PPG has had knowledge of the '763 patent since around the time the patent issued on January 26, 2016.

104. PPG has directly infringed at least claim 1 of the '763 patent.

105. On information and belief, PPG has spray-applied its Innovel HPS coating to the interior of at least one beverage can in the United States.

106. PPG has actively induced and actively induces others to infringe at least claim 1 of the '763 patent, in violation of 35 U.S.C. § 271(b).

107. PPG has sold its Innovel HPS coating to customers in the United States, including manufacturers of beverage cans.

108. Despite PPG's knowledge of the '763 patent and knowledge of Plaintiff's allegations of infringement, PPG is actively inducing others in the United States to make, use, offer for sale, sell and/or import into the United States articles of manufacture, and/or use and perform methods, covered by one or more claims of the '763 patent. Such articles of manufacture include, for example, beverage cans on which the Innovel HPS product(s) have been applied. Such methods use and involve, for example, application of coating compositions, including PPG's Innovel HPS product(s), to beverage cans.

109. PPG's customers, including manufacturers of beverage cans in the United States, on information and belief, are directly infringing the '763 patent, including at least claim 1, through their use and performance of methods covered by one or more claims of the '763 patent, including methods using and involving application of the Innovel HPS product(s) to beverage cans.

110. Claim 1 of the '763 patent recites:

A method, comprising the steps of: receiving a coating composition that includes an emulsion polymerized latex polymer that comprises a reaction product of an ethylenically unsaturated monomer component polymerized in the presence of an aqueous dispersion of a salt of an acid- or anhydride-functional polymer, wherein the ethylenically unsaturated monomer component includes an oxirane group-containing monomer and at least 40 wt-% of the ethylenically unsaturated monomer component comprises one or more monomers selected from alkyl acrylates and methacrylates, and wherein the coating composition is substantially free of bound BPA; spray applying the coating composition onto an interior surface of an aluminum beverage can including a body portion and a bottom end portion; and curing the coating composition to form a continuous cured coating.

111. Innovel HPS is a coating composition that includes an emulsion polymerized latex polymer that comprises a reaction product of an ethylenically unsaturated monomer component polymerized in the presence of an aqueous dispersion of a salt of an acid- or anhydride-functional polymer, wherein the ethylenically unsaturated monomer component includes an oxirane group-containing monomer and at least 40 wt-% of the ethylenically unsaturated monomer component

comprises one or more monomers selected from alkyl acrylates and methacrylates, and wherein the coating composition is substantially free of bound BPA.

112. PPG's customers, including manufacturers of beverage cans in the United States, on information and belief, are receiving a coating composition Innoval HPS, spray applying the coating composition Innoval HPS onto an interior surface of an aluminum beverage can including a body portion and a bottom end portion, and curing the coating composition Innoval HPS to form a continuous cured coating, and are thereby directly infringing at least claim 1 of the '763 patent.

113. On information and belief, PPG knowingly induces infringement of the '763 patent, including at least claim 1, and does so with specific intent to induce infringement, and/or with willful blindness to the possibility that its acts induce infringement, including through activities relating to selling, marketing, advertising, promotion, support, and distribution of coating compositions, including the Innoval HPS product(s).

114. PPG publishes materials that encourage and instruct its customers, including manufacturers of beverage cans, to use the Innoval HPS product(s) on cans in a manner that directly infringes the '763 patent, including, for example, press releases entitled "PPG Packaging Coatings launches cutting-edge INNOVEL HPS coatings," attached hereto as Exhibit F; "PPG reports steadily increasing use of INNOVEL HPS beverage-can spray coatings," attached hereto as Exhibit G; and "PPG to highlight new INNOVEL beverage-can coatings at Guangzhou trade show," attached hereto as Exhibit H. These materials can be found, as of the date of the filing of the original Complaint, at the URLs <http://corporate.ppg.com/Media/Newsroom/2014/PPG-Packaging-Coatings-launches-cutting-edge-INNOV>; <http://corporate.ppg.com/Media/Newsroom/2015/PPG-reports-steadily-increasing-use-of-INNOVEL-HPS>; and <http://corporate.ppg.com/Media/Newsroom/2015/PPG-highlights-new-INNOVEL-coatings-Guangzhou2015>, respectively.

115. The press release entitled “PPG Packaging Coatings launches cutting-edge INNOVEL HPS coatings” states that PPG’s Innoval HPS product(s) are “internal protective spray lacquers for the beverage can industry” and “ha[ve] been approved for use on aluminum and steel beverage cans.” The press release entitled “PPG reports steadily increasing use of INNOVEL HPS beverage-can spray coatings” states,

Innoval HPS products use water-based Bisphenol A non-intent (BPA-NI, or with no BPA intentionally added) coatings technology that makes them compliant with applicable European and United States regulations, including the recent national BPA legislation in France. Beyond meeting government regulations, Innoval HPS coatings have been shown to satisfy the needs of beverage industry as well.

The same press release also states that Innoval HPS coatings

run efficiently on beverage-can production lines with little need for line changes or disruptions and strong support from highly experienced PPG technical and customer-service teams. Through a SECURE LAUNCH™ process, PPG provides beverage-can makers with hands-on training to minimize changeover time as they replace traditional epoxy-based coatings with new Innoval HPS coatings. The PPG technical-support team also works with each can maker to evaluate equipment and optimize the conversion process.

“PPG’s goal is to provide its customers with the best product to protect beverage cans and the best service, allowing them to convert to using Innoval HPS coatings with no disruption to their operations”...

The press release entitled “PPG to highlight new INNOVEL beverage-can coatings at Guangzhou trade show” states,

INNOVEL HPS spray coatings for aluminum and steel beverage cans...provide[] flavor-neutral properties as well as effective pasteurization and retort capabilities, making them suitable for a broad range of filling products. Innoval HPS coatings are approved by all major brands, and they are commercially and globally available. Innoval HPS coatings cover all weight specifications and run efficiently on can makers’ lines.

116. PPG actively publicizes such promotional and instructional materials for coating compositions, including the Innoval HPS product(s), through numerous means, including through the website [www.corporate.ppg.com](http://www.corporate.ppg.com).

117. On information and belief, PPG provides its customers, including manufacturers of beverage cans, with additional instructions that direct the customers to use coating compositions, including the Innoval HPS product(s), in a manner that directly infringes the '763 patent, including by applying Innoval HPS to beverage cans as claimed in the '763 patent. Such instructions include, for example, application data sheets and/or product data sheets.

118. On information and belief, PPG also provides its customers, including manufacturers of beverage cans, with assistance and direction from sales and/or service personnel who direct the customers to use coating compositions, including the Innoval HPS product(s), in a manner that directly infringes the '763 patent, including by applying Innoval HPS to beverage cans as claimed in the '763 patent.

119. PPG has contributed and contributes to and others' infringement of at least claim 1 of the '763 patent, in violation of 35 U.S.C. § 271(c).

120. Despite PPG's knowledge of the '763 patent and knowledge of Plaintiff's allegations of infringement, PPG is contributing to the infringement of the '763 patent by selling and/or offering for sale in the United States products that are components of articles of manufacture, and/or are used by others to perform methods, covered by one or more claims of the '763 patent. Such sold and/or offered for sale products include coating compositions, including the Innoval HPS product(s). Such articles of manufacture include, for example, beverage cans on which the Innoval HPS product(s) have been applied. Such methods use and involve, for example, application of coating compositions, including PPG's Innoval HPS product(s), to beverage cans. The sold and/or offered for sale coating compositions are material to practicing the '763 patent, are especially made and/or adapted for use in infringing the '763 patent, and are not staple articles or commodities of commerce suitable for substantial noninfringing use.

121. Materials PPG publishes, for example, demonstrate that its coating compositions, including the Innoval HPS product(s), are specifically made and/or adapted for application to beverage cans, for infringement of the '763 patent. Such materials include press releases entitled "PPG Packaging Coatings launches cutting-edge INNOVEL HPS coatings," attached hereto as Exhibit F; "PPG reports steadily increasing use of INNOVEL HPS beverage-can spray coatings," attached hereto as Exhibit G; and "PPG to highlight new INNOVEL beverage-can coatings at Guangzhou trade show," attached hereto as Exhibit H. These materials can be found, as of the date of the filing of the original Complaint, at the URLs <http://corporate.ppg.com/Media/Newsroom/2014/PPG-Packaging-Coatings-launches-cutting-edge-INNOV>; <http://corporate.ppg.com/Media/Newsroom/2015/PPG-reports-steadily-increasing-use-of-INNOVEL-HPS>; and <http://corporate.ppg.com/Media/Newsroom/2015/PPG-highlights-new-INNOVEL-coatings-Guangzhou2015>, respectively. The press release entitled "PPG Packaging Coatings launches cutting-edge INNOVEL HPS coatings," for example, states that PPG's Innoval HPS product(s) are "internal protective spray lacquers for the beverage can industry" and "ha[ve] been approved for use on aluminum and steel beverage cans." PPG's customers, including manufacturers of beverage cans, apply PPG's coating compositions, including the Innoval HPS product(s), to beverage cans, as PPG directs and instructs them to do, and do not use the coating compositions in a way that is a substantial non-infringing use.

122. PPG's customers, including manufacturers of beverage cans, on information and belief, are directly infringing the '763 patent, including at least claim 1, through their making, using, selling, offering for sale, and/or importing into the United States articles of manufacture, and/or use and performance of methods, covered by one or more claims of the '763 patent, including methods using and involving application of the Innoval HPS product(s) to beverage cans.

123. Claim 1 of the '763 patent recites:

A method, comprising the steps of: receiving a coating composition that includes an emulsion polymerized latex polymer that comprises a reaction product of an ethylenically unsaturated monomer component polymerized in the presence of an aqueous dispersion of a salt of an acid- or anhydride-functional polymer, wherein the ethylenically unsaturated monomer component includes an oxirane group-containing monomer and at least 40 wt-% of the ethylenically unsaturated monomer component comprises one or more monomers selected from alkyl acrylates and methacrylates, and wherein the coating composition is substantially free of bound BPA; spray applying the coating composition onto an interior surface of an aluminum beverage can including a body portion and a bottom end portion; and curing the coating composition to form a continuous cured coating.

124. Innovel HPS is a coating composition that includes an emulsion polymerized latex polymer that comprises a reaction product of an ethylenically unsaturated monomer component polymerized in the presence of an aqueous dispersion of a salt of an acid- or anhydride-functional polymer, wherein the ethylenically unsaturated monomer component includes an oxirane group-containing monomer and at least 40 wt-% of the ethylenically unsaturated monomer component comprises one or more monomers selected from alkyl acrylates and methacrylates, and wherein the coating composition is substantially free of bound BPA.

125. PPG's customers, including manufacturers of beverage cans, on information and belief, are receiving a coating composition Innovel HPS, spray applying the coating composition Innovel HPS onto an interior surface of an aluminum beverage can including a body portion and a bottom end portion, and curing the coating composition Innovel HPS to form a continuous cured coating, and are thereby directly infringing at least claim 1 of the '763 patent.

126. On information and belief, PPG knowingly contributes to infringement of the '763 patent, including at least claim 1.

127. At least as of the filing of the original Complaint on May 23, 2016, PPG has had knowledge, and/or is willfully blind to the facts that, its coating compositions, including the Innovel HPS product(s), are material to practicing the '763 patent, specifically made and/or

adapted for infringement of the '763 patent, and not staple articles of commerce suitable for substantial noninfringing use. At least as of the filing of the original Complaint on May 23, 2016, PPG also has had knowledge, and/or is willfully blind to the fact that, its selling and offering to sell coating compositions, including the Innovel HPS product(s), contribute to PPG's customers and others making, using, selling, offering to sell and/or importing into the United States articles of manufacture, and/or performing methods, covered by one or more claims of the '763 patent.

128. PPG's infringement of the '763 patent has been and continues to be willful.

129. As alleged above, PPG knew of the '763 patent shortly after the date the patent issued on January 26, 2016. PPG also knew it was directly and indirectly infringing the '763 patent by making, using, selling and/or importing Innovel HPS in the United States at or around the time that PPG learned of the '763 patent. Moreover, PPG had further notice of its infringement of the '763 patent when it was served with the initial Complaint in this action.

130. PPG has previously recognized that with respect to patents owned by Sherwin-Williams, PPG needed to "confirm[] its freedom to operate and its legal rights with respect to its Innovel HPS product." *PPG Indus., Inc. v. Valspar Sourcing, Inc.*, Appeal No. 2016-1406, Dkt. 40 at 2 (Nov. 15, 2016).

131. In response to its recognized need for a "freedom to operate," PPG filed *inter partes* reexamination requests challenging the validity of Sherwin-Williams' '876 patent and '047 patent. The '876 patent and the '047 patent are both related to the '763 patent. Specifically, the '763 patent claims priority to the '047 patent, and the '876 patent is a continuation-in-part of the '047 patent.

132. PPG also filed oppositions to related Sherwin-Williams patents in Europe, including to European Patent Nos. EP1819789, EP2420541, EP2420542, which all claim priority

to U.S. Provisional Patent Application No. 60/620,639 to which all the Patents-in-Suit claim priority.

133. PPG, however, did not seek to challenge the validity of the '763 patent at the Patent Office; rather, it continued making, using, selling and/or importing Innoval HPS in the United States.

134. Documents produced by PPG in this case confirm that PPG's Innoval HPS directly and indirectly infringes numerous asserted claims. To date, PPG has not provided any specific bases for asserting non-infringement.

135. Through the initial stages of this litigation, the sole defense PPG has focused on to justify its infringing conduct relates to PPG's own internal "Perez prior art." *E.g.*, Dkt. 35 at 4-5, 11, 17. PPG has not advanced any other specific invalidity arguments.

136. PPG's reliance on the alleged "Perez prior art" to provide a freedom to operate is not reasonable, as the "Perez prior art" is different from the accused Innoval HPS coating and does not have all of the necessary characteristics of a coating composition that is used to coat the interior of a can.

137. For example, because the "Perez prior art" does not disclose an organic-solution polymerized acid- or anhydride-functional polymer it was not reasonable for PPG to rely on it for the claims of the '763 patent that require such an acid- or anhydride-functional polymer. *See, e.g.*, '763 patent at claims 17-21, 23-25, 34-45, 48-53, 55-58, 62-65.

138. Despite knowing it infringed the '763 patent and without a reasonable invalidity argument, PPG continued making, selling, using, and/or importing Innoval HPS in the United States.

139. Moreover, PPG continues to escalate its sales efforts of Innoval HPS in the United States in disregard of Sherwin-Williams' '763 patent rights. For example, PPG undertook a process to "Re-Launch" Innoval HPS in or around September 2016, well after the filing of the Complaint in this Action, and despite PPG's failure to address its freedom-to-operate concerns. *See* PPG1429CASE013654.

140. Because PPG had knowledge of Sherwin-Williams' '763 patent rights and proceeded to infringe and increase its infringement in an egregious manner beyond typical infringement, PPG's infringement is willful.

\* \* \*

141. Unless and until enjoined by this Court, PPG will continue to directly infringe as well as induce and contribute to infringement of the '763 patent. PPG's infringing acts are causing and will continue to cause Sherwin-Williams irreparable harm, for which there is no adequate remedy at law. Under 35 U.S.C. § 283, Sherwin-Williams is entitled to a permanent injunction against further infringement.

#### **FOURTH CAUSE OF ACTION**

##### **Infringement of the '900 patent**

142. Plaintiff realleges and incorporates paragraphs 1–141 as though fully set forth herein.

143. PPG had knowledge of the application that issued as the '900 patent since around the time of its publication on May 19, 2016, and has had knowledge of the '900 patent since around the time the patent issued on August 16, 2016.

144. PPG has directly infringed at least claim 1 of the '900 patent.

145. PPG has offered for sale and sold its Innoval HPS coating to customers in the United States, including manufacturers of beverage cans.

146. Despite PPG's knowledge of the '900 patent and knowledge of Plaintiff's allegations of infringement, PPG continues to offer for sale and sell its Innoval HPS product(s) to customers in the United States, including manufacturers of beverage cans.

147. Claim 1 of the '900 patent recites:

An inside spray beverage can coating composition, comprising: an emulsion polymerized latex polymer that is prepared from ingredients including: a salt of an acid- or anhydride-functional acrylic polymer and an amine; an ethylenically unsaturated monomer component that includes a vinyl aromatic compound and an oxirane-group containing monomer; and water; wherein the coating composition is substantially free of bound bisphenol A, and wherein the coating composition is suitable for forming an inside spray coating of a two-piece drawn and ironed aluminum beverage can.

148. Innoval HPS is an inside spray beverage can coating composition that includes an emulsion polymerized latex polymer that is prepared from ingredients including a salt of an acid- or anhydride-functional acrylic polymer and an amine, an ethylenically unsaturated monomer component that includes a vinyl aromatic compound and an oxirane-containing monomer, and water, wherein the coating composition is substantially free of bound bisphenol A and wherein the coating composition is suitable for forming an inside spray coating of a two-piece drawn and ironed aluminum beverage can.

149. PPG sells and offers for sale Innoval HPS for use as an inside spray coating of a two-piece drawn and ironed aluminum beverage can in the United States and thereby directly infringes at least claim 1 of the '900 patent.

150. PPG publishes materials that demonstrate the Innoval HPS product(s) are suitable for use as an inside spray coating of a two-piece drawn and ironed aluminum beverage can that infringes the '900 patent, including, for example, press releases entitled "PPG Packaging Coatings launches cutting-edge INNOVEL HPS coatings," attached hereto as Exhibit F; "PPG reports steadily increasing use of INNOVEL HPS beverage-can spray coatings," attached hereto as

Exhibit G; and “PPG to highlight new INNOVEL beverage-can coatings at Guangzhou trade show,” attached hereto as Exhibit H. These materials can be found, as of the date of the filing of the original Complaint, at the URLs <http://corporate.ppg.com/Media/Newsroom/2014/PPG-Packaging-Coatings-launches-cutting-edge-INNOV>; <http://corporate.ppg.com/Media/Newsroom/2015/PPG-reports-steadily-increasing-use-of-INNOVEL-HPS>; and <http://corporate.ppg.com/Media/Newsroom/2015/PPG-highlights-new-INNOVEL-coatings-Guangzhou2015>, respectively.

151. The press release entitled “PPG Packaging Coatings launches cutting-edge INNOVEL HPS coatings” states that PPG’s Innoval HPS product(s) are “internal protective spray lacquers for the beverage can industry” and “ha[ve] been approved for use on aluminum and steel beverage cans.” The press release entitled “PPG reports steadily increasing use of INNOVEL HPS beverage-can spray coatings” states,

Innoval HPS products use water-based Bisphenol A non-intent (BPA-NI, or with no BPA intentionally added) coatings technology that makes them compliant with applicable European and United States regulations, including the recent national BPA legislation in France. Beyond meeting government regulations, Innoval HPS coatings have been shown to satisfy the needs of beverage industry as well.

The same press release also states that Innoval HPS coatings

run efficiently on beverage-can production lines with little need for line changes or disruptions and strong support from highly experienced PPG technical and customer-service teams. Through a SECURE LAUNCH™ process, PPG provides beverage-can makers with hands-on training to minimize changeover time as they replace traditional epoxy-based coatings with new Innoval HPS coatings. The PPG technical-support team also works with each can maker to evaluate equipment and optimize the conversion process.

“PPG’s goal is to provide its customers with the best product to protect beverage cans and the best service, allowing them to convert to using Innoval HPS coatings with no disruption to their operations”...

The press release entitled “PPG to highlight new INNOVEL beverage-can coatings at Guangzhou trade show” states,

INNOVEL HPS spray coatings for aluminum and steel beverage cans...provide[] flavor-neutral properties as well as effective pasteurization and retort capabilities, making them suitable for a broad range of filling products. Innovel HPS coatings are approved by all major brands, and they are commercially and globally available. Innovel HPS coatings cover all weight specifications and run efficiently on can makers' lines.

152. PPG actively publicizes such promotional and instructional materials for coating compositions, including the Innovel HPS product(s), through numerous means, including through the website [www.corporate.ppg.com](http://www.corporate.ppg.com).

153. PPG's infringement of the '900 patent has been and continues to be willful.

154. As alleged above, PPG knew of the '900 patent shortly after the date the patent issued on August 16, 2016. PPG also knew it was directly infringing the '900 patent by making, using, selling and/or importing Innovel HPS in the United States at or around the time that PPG learned of the '900 patent. Moreover, PPG had further notice of its infringement of the '900 patent when it was served with the first Amended Complaint in this action.

155. PPG has previously recognized that with respect to patents owned by Sherwin-Williams, PPG needed to "confirm[] its freedom to operate and its legal rights with respect to its Innovel HPS product." *PPG Indus., Inc. v. Valspar Sourcing, Inc.*, Appeal No. 2016-1406, Dkt. 40 at 2 (Nov. 15, 2016).

156. In response to its recognized need for a "freedom to operate," PPG filed *inter partes* reexamination requests challenging the validity of Sherwin-Williams' '876 patent and '047 patent. The '876 patent and the '047 patent are both related to the '900 patent. Specifically, the '900 patent claims priority to the '047 patent, and the '876 patent is a continuation-in-part of the '047 patent.

157. PPG also filed oppositions to related Sherwin-Williams patents in Europe, including to European Patent Nos. EP1819789, EP2420541, EP2420542, which all claim priority

to U.S. Provisional Patent Application No. 60/620,639 to which all the Patents-in-Suit claim priority.

158. PPG, however, did not seek to challenge the validity of the '900 patent at the Patent Office; rather, it continued making, using, selling and/or importing Innoval HPS in the United States.

159. Documents produced by PPG in this case confirm that PPG's Innoval HPS directly infringes numerous asserted claims. To date, PPG has not provided any specific bases for asserting non-infringement.

160. Through the initial stages of this litigation, the sole defense PPG has focused on to justify its infringing conduct relates to PPG's own internal "Perez prior art." *E.g.*, Dkt. 35 at 4-5, 11, 17. PPG has not advanced any other specific invalidity arguments.

161. PPG's reliance on the alleged "Perez prior art" to provide a freedom to operate is not reasonable, as the "Perez prior art" is different from the accused Innoval HPS coating and does not have all of the necessary characteristics of a coating composition that is used to coat the interior of a can.

162. For example, because the "Perez prior art" does not disclose an organic-solution polymerized acid- or anhydride-functional polymer or a phenoplast crosslinker it was not reasonable for PPG to rely on it for the claims of the '900 patent that require such an acid- or anhydride-functional polymer. *See, e.g.*, '900 patent at claims 24, 26-32, 34-39, 44, 53-58, 67-81, 84-86.

163. Despite knowing it infringed the '900 patent and without a reasonable invalidity argument, PPG continued making, selling, using, and/or importing Innoval HPS in the United States.

164. Moreover, PPG continues to escalate its sales efforts of Innoval HPS in the United States in disregard of Sherwin-Williams' '900 patent rights. For example, PPG undertook a process to "Re-Launch" Innoval HPS in or around September 2016, after Sherwin-Williams notified PPG of its intent to file an Amended Complaint alleging infringement of the '900 patent, and despite PPG's failure to address its freedom-to-operate concerns. *See* PPG1429CASE013654.

165. Because PPG had knowledge of Sherwin-Williams' '900 patent rights and proceeded to infringe and increase its infringement in an egregious manner beyond typical infringement, PPG's infringement is willful.

\* \* \*

166. Unless and until enjoined by this Court, PPG will continue to directly infringe the '900 patent. PPG's infringing acts are causing and will continue to cause Sherwin-Williams irreparable harm, for which there is no adequate remedy at law. Under 35 U.S.C. § 283, Sherwin-Williams is entitled to a permanent injunction against further infringement.

#### **FIFTH CAUSE OF ACTION**

##### **Infringement of the '854 patent**

167. Plaintiff realleges and incorporates paragraphs 1–166 as though fully set forth herein.

168. PPG had knowledge of the application that issued as the '854 patent since at least January 30, 2017, when counsel for PPG emailed counsel for Sherwin-Williams requesting the "file wrappers for any unpublished U.S. counterparts ... includ[ing] at the least the following unpublished U.S. application: 15/205,490." PPG has been aware of the claims of the '854 patent since at least February 10, 2017, when counsel for Sherwin-Williams responded to counsel for PPG's email and informed counsel for PPG that "U.S. Application No. 15/205,490 has published and is thus publicly available." PPG has had knowledge of the '854 patent since the day the patent

issued on January 9, 2018. PPG has known that the '854 patent was going to issue since at least November 30, 2017, when counsel for Sherwin-Williams sent counsel for PPG an email informing PPG of the Notice of Allowance.

169. PPG has directly infringed at least claim 25 of the '854 patent.

170. PPG has offered for sale and sold its Innovel HPS coating to customers in the United States, including manufacturers of beverage cans.

171. Despite PPG's knowledge of the '854 patent and knowledge of Plaintiff's allegations of infringement, PPG continues to offer for sale and sell its Innovel HPS product(s) to customers in the United States, including manufacturers of beverage cans.

172. Claim 25 of the '854 patent recites:

An inside spray beverage can coating composition, comprising: an emulsion polymerized latex polymer that is substantially free of bound bisphenol A and bound aromatic glycidyl ether compounds and is prepared by emulsion polymerizing an ethylenically unsaturated monomer component in the presence of an aqueous dispersion of a salt of an organic-solution polymerized acid- or anhydride-functional acrylic polymer and a tertiary amine, wherein the ethylenically unsaturated monomer component includes an alkyl (meth)acrylate, a glycidyl ester of an alpha, beta-ethylenically unsaturated acid or anhydride, and a vinyl aromatic component that is at least 20 wt-% of the ethylenically unsaturated monomer component; and a phenoplast crosslinker; wherein the inside spray beverage can coating composition is made without using PVC compounds.

173. Innovel HPS is an inside spray beverage can coating composition, comprising an emulsion polymerized latex polymer that is substantially free of bound bisphenol A and bound aromatic glycidyl ether compounds and is prepared by emulsion polymerizing an ethylenically unsaturated monomer component in the presence of an aqueous dispersion of a salt of an organic-solution polymerized acid- or anhydride-functional acrylic polymer and a tertiary amine, wherein the ethylenically unsaturated monomer component includes an alkyl (meth)acrylate, a glycidyl ester of an alpha, beta-ethylenically unsaturated acid or anhydride, and a vinyl aromatic component that is at least 20 wt-% of the ethylenically unsaturated monomer component; and a phenoplast

crosslinker; wherein the inside spray beverage can coating composition is made without using PVC compounds.

174. PPG sells and offers for sale Innovel HPS for use as an inside spray beverage can coating in the United States and thereby directly infringes at least claim 25 of the '854 patent.

175. PPG publishes materials that demonstrate the Innovel HPS product(s) are used as an inside spray beverage can coating that infringes the '854 patent, including, for example, press releases entitled "PPG Packaging Coatings launches cutting-edge INNOVEL HPS coatings," attached hereto as Exhibit F; "PPG reports steadily increasing use of INNOVEL HPS beverage-can spray coatings," attached hereto as Exhibit G; and "PPG to highlight new INNOVEL beverage-can coatings at Guangzhou trade show," attached hereto as Exhibit H. These materials can be found, as of the date of the filing of the original Complaint, at the URLs <http://corporate.ppg.com/Media/Newsroom/2014/PPG-Packaging-Coatings-launches-cutting-edge-INNOV>; <http://corporate.ppg.com/Media/Newsroom/2015/PPG-reports-steadily-increasing-use-of-INNOVEL-HPS>; and <http://corporate.ppg.com/Media/Newsroom/2015/PPG-highlights-new-INNOVEL-coatings-Guangzhou2015>, respectively.

176. The press release entitled "PPG Packaging Coatings launches cutting-edge INNOVEL HPS coatings" states that PPG's Innovel HPS product(s) are "internal protective spray lacquers for the beverage can industry" and "ha[ve] been approved for use on aluminum and steel beverage cans." The press release entitled "PPG reports steadily increasing use of INNOVEL HPS beverage-can spray coatings" states,

Innovel HPS products use water-based Bisphenol A non-intent (BPA-NI, or with no BPA intentionally added) coatings technology that makes them compliant with applicable European and United States regulations, including the recent national BPA legislation in France. Beyond meeting government regulations, Innovel HPS coatings have been shown to satisfy the needs of beverage industry as well.

The same press release also states that Innovel HPS coatings

run efficiently on beverage-can production lines with little need for line changes or disruptions and strong support from highly experienced PPG technical and customer-service teams. Through a SECURE LAUNCH™ process, PPG provides beverage-can makers with hands-on training to minimize changeover time as they replace traditional epoxy-based coatings with new Innoval HPS coatings. The PPG technical-support team also works with each can maker to evaluate equipment and optimize the conversion process.

“PPG’s goal is to provide its customers with the best product to protect beverage cans and the best service, allowing them to convert to using Innoval HPS coatings with no disruption to their operations”...

The press release entitled “PPG to highlight new INNOVEL beverage-can coatings at Guangzhou trade show” states,

INNOVEL HPS spray coatings for aluminum and steel beverage cans...provide[] flavor-neutral properties as well as effective pasteurization and retort capabilities, making them suitable for a broad range of filling products. Innoval HPS coatings are approved by all major brands, and they are commercially and globally available. Innoval HPS coatings cover all weight specifications and run efficiently on can makers’ lines.

177. PPG actively publicizes such promotional and instructional materials for coating compositions, including the Innoval HPS product(s), through numerous means, including through the website [www.corporate.ppg.com](http://www.corporate.ppg.com).

178. PPG’s infringement of the ’854 patent has been and continues to be willful.

179. As alleged above, PPG knew of the ’854 patent on the date the patent issued on January 9, 2018, knew that the ’854 patent was going to issue at least by November 30, 2017, and knew of the claims of the ’854 patent at least as early as February 10, 2017. PPG also knew it was directly infringing the ’854 patent by making, using, selling and/or importing Innoval HPS in the United States at or around the time that PPG learned of the ’854 patent. PPG had further notice of its infringement on December 4, 2017, when counsel for Sherwin-Williams served PPG with infringement contentions for the allowed patent application that issued as the ’854 patent.

Moreover, PPG had further notice of its infringement of the '854 patent when Sherwin-Williams served PPG with its Third Amended Complaint in this action.

180. Despite Sherwin-Williams' repeated notices of PPG's infringement of the '854 patent, PPG continued making, using, selling and/or importing Innoval HPS in the United States.

181. Documents produced by PPG in this case confirm that PPG's Innoval HPS directly infringes numerous asserted claims. To date, PPG has not provided any specific bases for asserting non-infringement.

182. PPG's reliance on the alleged "Perez prior art" to provide a freedom to operate is not reasonable, as the "Perez prior art" is different from the accused Innoval HPS coating and does not have all of the necessary characteristics of a coating composition that is used to coat the interior of a can.

183. For example, because the "Perez prior art" does not disclose an organic-solution polymerized acid- or anhydride-functional acrylic polymer or a phenoplast crosslinker it was not reasonable for PPG to rely on it for the claims of the '854 patent that require such an acid- or anhydride-functional acrylic polymer and/or a phenoplast crosslinker. *See, e.g.*, '854 patent at claims 1–9, 11–32, 34–47, 49–55, 57–62, 64.

184. Despite knowing it infringed the '854 patent and without a reasonable invalidity argument, PPG continued making, selling, using, and/or importing Innoval HPS in the United States.

185. Moreover, PPG continues to escalate its sales efforts of Innoval HPS in the United States in disregard of Sherwin-Williams' '854 patent rights. For example, PPG undertook a process to "Re-Launch" Innoval HPS in or around September 2016 and has continued making

sales of Innoval HPS through 2017, despite PPG's knowledge of the pending claims of the '854 patent. *See* PPG1429CASE013654.

186. Because PPG had knowledge of Sherwin-Williams's '854 patent rights and proceeded to infringe and increase its infringement in an egregious manner beyond typical infringement, PPG's infringement is willful.

\* \* \*

187. Unless and until enjoined by this Court, PPG will continue to directly infringe the '854 patent. PPG's infringing acts are causing and will continue to cause Sherwin-Williams irreparable harm, for which there is no adequate remedy at law. Under 35 U.S.C. § 283, Sherwin-Williams is entitled to a permanent injunction against further infringement.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in favor of Plaintiff and prays that the Court grant the following relief to Plaintiff:

- (a) A judgment that PPG infringes each of the Asserted Patents;
- (b) An order permanently enjoining PPG, its affiliates and subsidiaries, and each of its officers, agents, servants and employees and those acting in privity or concert with them, from making, offering to sell, selling, using, or importing into the United States products claimed in any of the claims of the Asserted Patents; using or performing methods claimed in any of the claims of the Asserted Patents; inducing others to use and perform methods that infringe any claim of the Asserted Patents; inducing others to make, offer, sell, use or import into the United States articles that infringe, or are made by a process that infringes, any claim of the Asserted Patents; contributing to others using and performing methods that infringe any claim of the Asserted Patents; and contributing to others making, offering, selling, using or importing into the United States articles that infringe any claim of the Asserted Patents, until after the expiration of the

Asserted Patents, including any extensions and/or additional periods of exclusivity to which Plaintiff is or becomes entitled;

(c) An order awarding damages under 35 U.S.C. §§ 154 & 284 in an amount sufficient to compensate Plaintiff for its damages arising from infringement by PPG, including, but not limited to, lost profits and/or a reasonable royalty, together with pre-judgment and post-judgment interest, and costs;

(d) A judgment that PPG's infringement of the '663, '012, '763, '900 and/or '854 patents has been and continues to be willful and an order awarding Plaintiff treble damages under 35 U.S.C. § 284;

(e) An accounting and/or supplemental damages for all damages occurring after any discovery cutoff and through the Court's decision regarding the imposition of a permanent injunction;

(f) A judgment declaring that this case is exceptional and awarding Plaintiff its reasonable costs and attorneys' fees pursuant to 35 U.S.C. § 285;

(g) Such further and other relief as this Court deems proper and just.

### **JURY DEMAND**

In accordance with Rule 38 of the Federal Rules of Civil Procedure, Plaintiff respectfully demands a jury trial of all issues triable to a jury in this action.

Dated: March 1, 2018

*/s/ Garret A. Leach, P.C.*

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*Counsel for The Sherwin-Williams Company*

**CERTIFICATE OF SERVICE**

I certify that on March 1, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Garret A. Leach, P.C.

Garret A. Leach, P.C.