

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

VERASEAL LLC,

Plaintiff,

v.

**WALMART INC. AND
WAL-MART STORES TEXAS, LLC**

Defendants.

CASE NO. 2:17-cv-527-JRG

PATENT CASE

JURY TRIAL DEMANDED

**SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT
AGAINST WALMART INC. AND WAL-MART STORES TEXAS, LLC**

Plaintiff Veraseal LLC files this Second Amended Complaint for Patent Infringement against Walmart Inc. and Wal-Mart Stores Texas, LLC (collectively “Defendants”), pursuant to Rule 15(a)(2), Fed.R.Civ.P., and the Docket Control Order (Dkt. No. 35), and respectfully shows the Court as follows:

I. THE PARTIES

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

2. On information and belief, Defendant Walmart Inc. is a Delaware corporation, with a place of business at 702 S.W. 8th Street, Bentonville, Arkansas 72716. Defendant Walmart Inc. is registered for the right to transact business in Texas and has a registered agent in Texas, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

3. On information and belief, Defendant Wal-Mart Stores Texas, LLC is a Delaware limited liability company, with a place of business at 702 S.W. 8th Street, Bentonville, Arkansas 72716. Defendant Wal-Mart Stores Texas, LLC is registered for the right to transact business in

Texas and has a registered agent in Texas, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

II. JURISDICTION AND VENUE

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

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

6. Defendants have 584 retail units in Texas as of February 16, 2017 including 380 supercenters, 20 discount stores, 100 neighborhood markets, and 84 Sam's Clubs. *See* <http://corporate.walmart.com/our-story/locations/united-states/texas#/united-states/texas>. For example, Defendants have numerous Walmart Supercenters within this District including at 1701 SE End Blvd, Marshall, TX 75670; 515 E Loop 281, Longview, TX 75605; 2440 Gilmer Rd, Longview, TX 75604; 4006 Estes Pkwy, Longview, TX 75603; 4000 New Boston Rd, Texarkana, TX 75501; 800 James Bowie Dr, New Boston, TX 75570; 1750 S Broadway St, Sulphur Springs, TX 75482; 7401 I-30 Frontage Rd, Greenville, TX 75402; 2701 State Hwy 50, Commerce, TX 75428; 2041 Redbud Blvd, McKinney, TX 75069; 1721 N Custer Rd, McKinney, TX 75071; 6001 N Central Expy, Plano, TX 75023; and 5001 McKinney Ranch Pkwy, McKinney, TX 75070. Defendants also have 19 distribution centers in Texas. *See id.* Defendants have spent \$50.7 billion with suppliers in Texas in fiscal year 2017. *See id.* Defendants have collected \$1.7 billion in taxes

and fees in Texas, and have also paid \$398.6 million in taxes and fees in Texas in fiscal year 2017. *See id.*

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

8. Venue is proper in this district under 28 U.S.C. § 1400(b). On information and belief, Defendants have regular and established places of business in this District and have committed acts of infringement in this District such that this Court is a fair and reasonable venue for the litigation of this action. Defendants have numerous places of business within this District. Defendants are registered to do business in Texas and have a registered agent in Dallas, Texas. On information and belief, from and within this District Defendants have committed at least a portion of the infringements at issue in this case by selling and offering for sale the Accused Instrumentalities in their stores located within this District.

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

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

10. Plaintiff incorporates the above paragraphs herein by reference.

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

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

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

14. Prior art containers and closures had many minor surface imperfections caused by the molding operations and thermal contraction. (*Id.* at col. 1:10-12). The imperfections made it extremely difficult to properly seal the containers. (*Id.* at col. 1:12-19). Various shapes of screw threaded containers, closures, and sealing gaskets have been used including complementary cone-shaped sealing surfaces for containers and closures with or without machine finish of the inter-engaging parts. (*Id.* at col. 1:20-24). These arrangements were costly, often required considerable physical effort to lock and unlock the closure from the container, and still sometimes leaked. (*Id.* at col. 1:24-29).

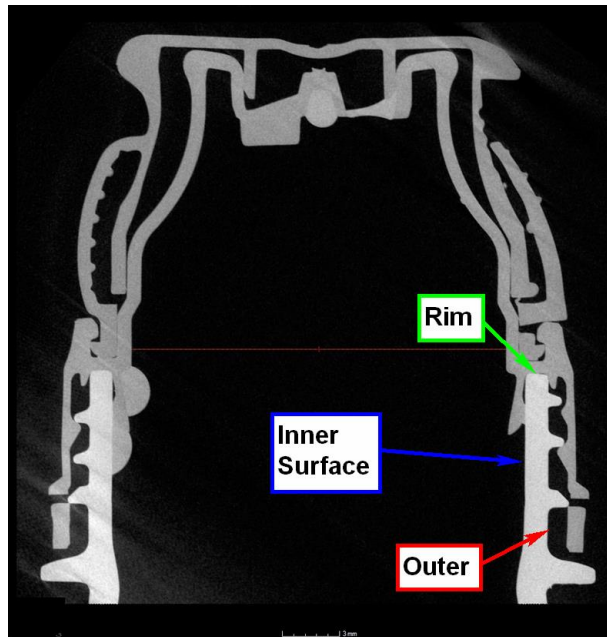
15. The inventor of the '953 patent recognized the problems of the prior art and designed a container and removable closure that “overcomes the problems previously encountered and provides a simple and inexpensive construction whereby the closure is effectively sealed and preferably locked to the container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

16. **Direct Infringement.** Upon information and belief, Defendants have been directly infringing at least claim 1 of the '953 patent in the State of Texas, in this District, and elsewhere in the United States, by actions comprising selling and offering for sale containers with removable closures including Poland Spring Water – Sport 700 ml products (“Accused Instrumentality”).

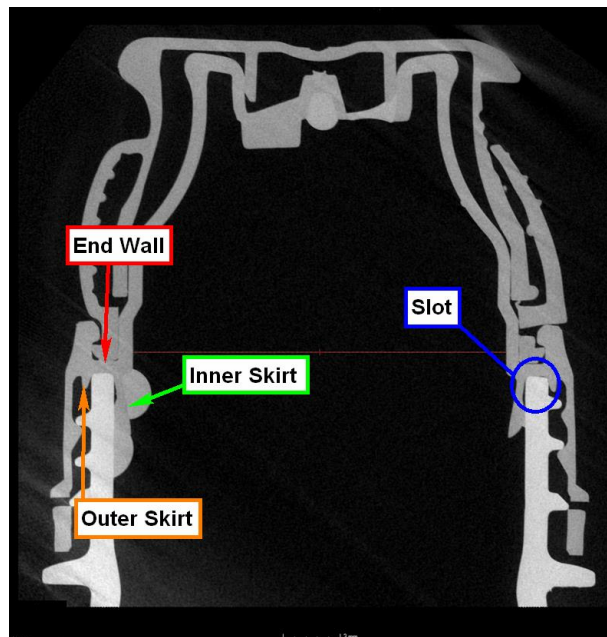
17. Upon information and belief, the Accused Instrumentality is a container and a removable closure that can be applied to the container in a sealing position:



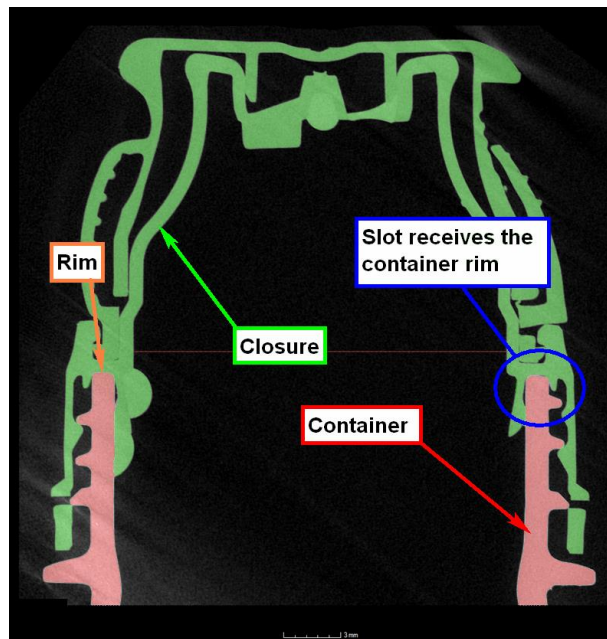
18. The Accused Instrumentality has a container with an outlet having an inner and outer surface terminating at one end in a rim:



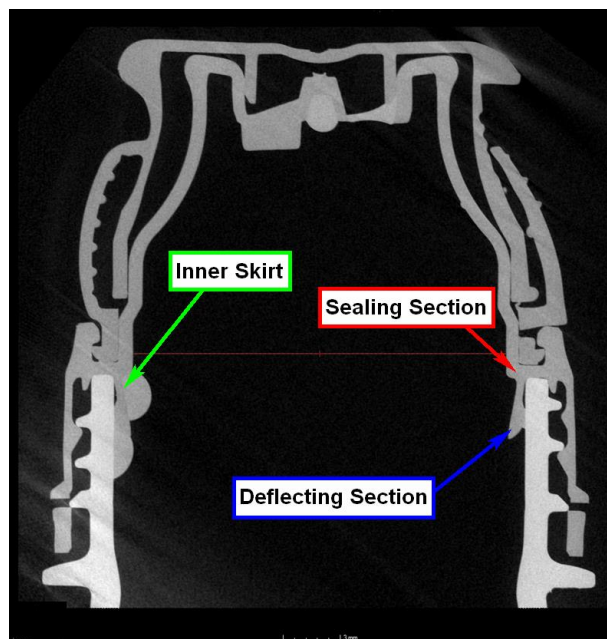
19. The closure of the Accused Instrumentality has an end wall with an inner and outer skirt and the inner and outer skirts define a slot between them:



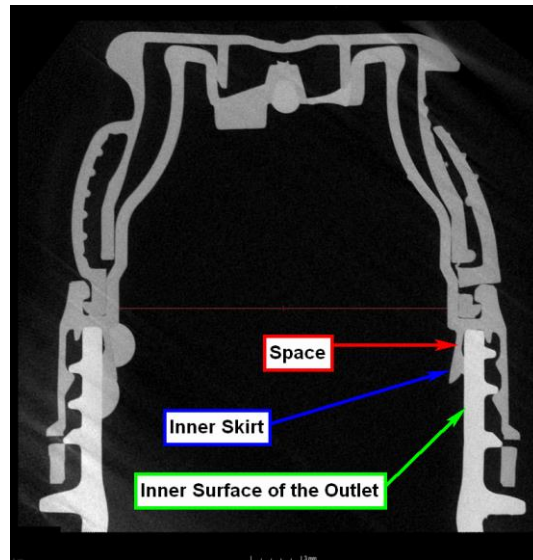
20. The slot of the Accused Instrumentality receives the container rim when the closure is applied to the container and is in a sealing position:



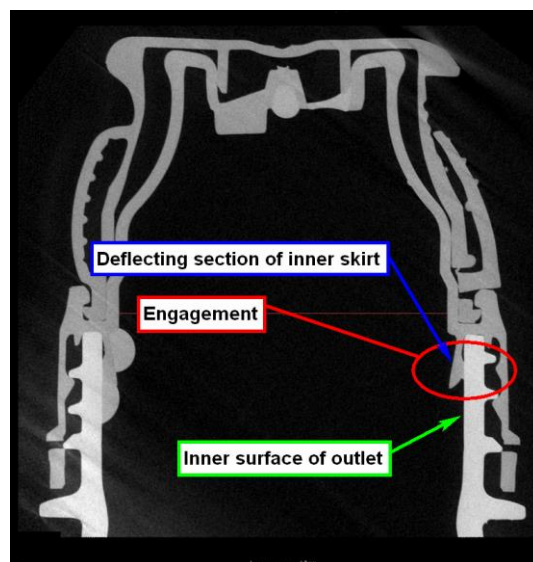
21. The inner skirt of the closure of the Accused Instrumentality has a deflecting section in the region of the free end of the inner skirt, and a sealing section spaced from the deflecting section:



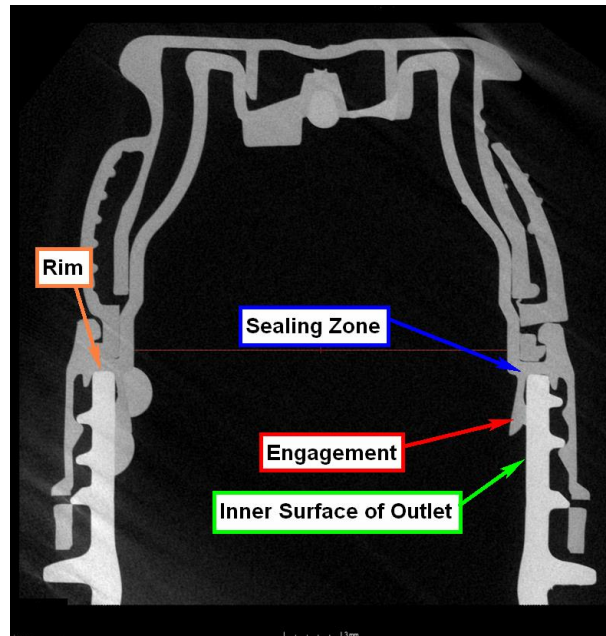
22. Between the deflecting and sealing sections of the closure of the Accused Instrumentality, there is a space between the inner skirt of the closure and the inner surface of the outlet of the container:



23. The cross-sectional area of the deflecting section of the closure of the Accused Instrumentality is greater than the cross-sectional area of the inner surface of the outlet of the container such that when the closure is applied to the container, the deflecting section of the inner skirt engages the inner surface of the outlet and causes a deflection thereof:



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



25. Plaintiff also incorporates by reference the claim charts served in accordance with PR 3-1 and the products identified therein.

26. Plaintiff has been damaged as a result of Defendants' infringing conduct. Defendants are thus liable to Plaintiff for damages in an amount that adequately compensates Plaintiff for such Defendants' infringement of the '953 patent, *i.e.*, in an amount that by law cannot be less than would constitute a reasonable royalty for the use of the patented technology, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

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

IV. COUNT II
(WILLFUL INFRINGEMENT OF UNITED STATES PATENT NO. 6,041,953)

28. Plaintiff incorporates the above paragraphs herein by reference.

29. Defendants' infringement was willful. On information and belief, on or shortly after December 17, 2015, Defendants were provided notice of the '953 patent and notice that Defendants were selling the Accused Instrumentality which were infringing one or more claims of the '953 patent. On information and belief, Defendants were provided with cross-sectional scans of the Accused Instrumentality demonstrating the infringement. Defendants contend that they rely on warranties by suppliers of products to Defendants ("Suppliers") that the products supplied do not infringe the intellectual property of others. On information and belief, on or shortly after December 17, 2015, one or more Suppliers was also provided notice of the '953 patent and notice that products supplied to Defendants infringed one or more claims of the '953 patent. On information and belief, the Suppliers were also provided with cross-sectional scans of the Accused Instrumentality demonstrating the infringement. Defendants therefore intentionally and knowingly infringed one or more claims of the '953 patent.

V. JURY DEMAND

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

VI. PRAYER FOR RELIEF

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

- a. Judgment that one or more claims of United States Patent No. 6,041,953 has been infringed, either literally and/or under the doctrine of equivalents, by Defendants and that their infringement was willful;

- b. Judgment that Defendants account for and pay to Plaintiff all damages to and costs incurred by Plaintiff because of Defendants' infringing activities and other conduct complained of herein;
- c. That Plaintiff be awarded treble damages for Defendants' willful infringement;
- d. That Plaintiff be granted pre-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;
- e. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: March 14, 2018

Respectfully submitted,

/s/ David R. Bennett

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**ATTORNEY FOR PLAINTIFF
VERASEAL LLC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served by e-mail and/or electronic file transfer on March 14, 2018, to counsel of record for defendants.

/s/ David R. Bennett

David R. Bennett