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9 Attorneys for Plaintiff  
10 ACORN WEST LLC

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

13  
14 ACORN WEST LLC, a California Limited  
Liability Company

15 Plaintiff,

16 vs.

17 BERKLEY INTERNATIONAL (NC),  
18 LLC, a California Limited Liability  
Company, BERKLEY INTERNATIONAL,  
19 LLC, an Arizona Limited Liability  
Company, and BERKLEY INDUSTRIES,  
20 LLC, an Arkansas Limited Liability  
Company,

21 Defendants.  
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Case No. 2:18-cv-10568

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

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1 Plaintiff Acorn West LLC (“Acorn” or “Plaintiff”) through its undersigned  
2 counsel, brings this action against Defendants Berkley International (NC), LLC,  
3 Berkley International, LLC, and Berkley Industries, LLC (collectively,  
4 “Defendants” or “Berkley”). In support of the Complaint, Acorn alleges as follows:

5 **THE PARTIES**

6 1. Plaintiff Acorn West LLC is a California limited liability company  
7 having its principal place of business at 3686 E. Olympic Boulevard, Los Angeles,  
8 CA 90023.

9 2. On information and belief, Defendant Berkley International (NC)  
10 LLC is a California limited liability company having a principal place of business  
11 at 2725 E El Presidio Street, Carson, California 90810.

12 3. On information and belief, Defendant Berkley International LLC is an  
13 Arizona limited liability company with an address according to the California  
14 Secretary of State at 2725 E El Presidio Street, Carson, California 90810.

15 4. On information and belief, Defendant Berkley Industries LLC is an  
16 Arkansas limited liability company having a principal place of business in  
17 Bentonville, Arkansas.

18 **JURISDICTION AND VENUE**

19 5. This is an action for patent infringement in violation of the patent laws  
20 of the United States, 35 U.S.C. § 271, et seq. This Court has exclusive subject  
21 matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

22 6. This Court has personal jurisdiction over each of the Defendants.  
23 Berkley International (NC) is formed within, and has conducted and does conduct  
24 business within, the State of California. On information and belief, Berkley  
25 Industries and Berkley International have conducted and do conduct business  
26 within, the State of California. On information and belief, Defendants, directly (via  
27 <http://goberkley.com/> or <http://moldedfiberpak.com>) or through subsidiaries or  
28 intermediaries, including distributors, retailers, and others, ships, distributes, offer

1 for sale and sell their products in the United States, the State of California, and the  
2 Central District of California. On information and belief, Defendants, directly and  
3 through subsidiaries or intermediaries, including distributors, retailers and others,  
4 have purposefully and voluntarily placed the Accused Product (as described  
5 below) into the stream of commerce in the Central District of California.  
6 Defendants have committed acts of patent infringement within the State of  
7 California and, more particularly, within the Central District of California. In a  
8 separate case, an attorney for the Defendants stipulated to a dismissal in the  
9 Central District of California. *See Timely Inventions, LLC v. Berkley International*  
10 *NC, LLC*, 2:17-cv-08173-AB-RAO (Dkt. No. 25).

11 7. Venue in this Judicial District is proper under 28 U.S.C. § 1391, given  
12 that a significant portion of the acts and transactions complained of herein were  
13 conceived, carried out, made effective, and had effect within the State of California  
14 and this Judicial District.

15 **FACTUAL ALLEGATIONS**

16 8. United States Patent No. 10,124,924 (“the ’924 Patent”) is titled  
17 “BEVERAGE CONTAINER PACKAGING” and was issued by the United States  
18 Patent and Trademark Office on November 13, 2018. A true and correct copy of  
19 the ’924 Patent is attached as Exhibit A.

20 9. Acorn owns by assignment the entire right, title, and interest in and to  
21 the ’924 Patent. As the owner of the entire right, title, and interest in and to the  
22 ’924 Patent, Acorn possesses the right to sue and to recover for infringement of the  
23 ’924 Patent.

24 10. On information and belief, the Defendants sell container packaging  
25 products via at least <http://goberkley.com/> and <http://moldedfiberpak.com>.

26 11. Contemporaneously herewith, Acorn has sent Defendants a cease and  
27 desist letter enclosing this Complaint.

28

1 12. Defendants have infringed and continue to infringe one or more  
2 claims of the '924 Patent by engaging in acts that constitute infringement under 35  
3 U.S.C. § 271 et seq.

4 13. Defendants have infringed and continue to infringe the '924 Patent by  
5 manufacturing, making, using, offering for sale, and/or selling within the United  
6 States certain products which embody, or in combination embody, one or more  
7 claims of the '924 Patent.

8 14. On information and belief, Defendants have offered for sale and sold  
9 container packaging products that meet all of the limitations of at least claim 1 of  
10 the '924 Patent. The following illustrates the Accused Product.




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On information and belief, the Accused Product is sold by Defendants as shown below with red box added:



Material	Molded Fiber (molded pulp)
How it looks	
Raw material	100% recycled paper and corrugated bails
Price	Minimal raw material price fluctuations in paper

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1 <http://www.moldedfiberpak.com/why-molded.html>. As such, Defendants are  
2 infringing the '924 Patent in violation of 35 U.S.C. § 271.

3 **CLAIM FOR RELIEF**

4 **(Patent Infringement of U.S. Patent No. 10,124,924)**

5 15. Acorn incorporates by reference the foregoing paragraphs of this  
6 Complaint as if fully set forth herein.

7 16. On information and belief, Defendants, alone or by directing and  
8 controlling others, have manufactured, used, imported, offered for sale, and/or sold  
9 and continue to sell in this district and elsewhere in the United States, the Accused  
10 Product which infringes at least claim 1 of the '924 Patent, as identified below in  
11 violation of 35 U.S.C. § 271.

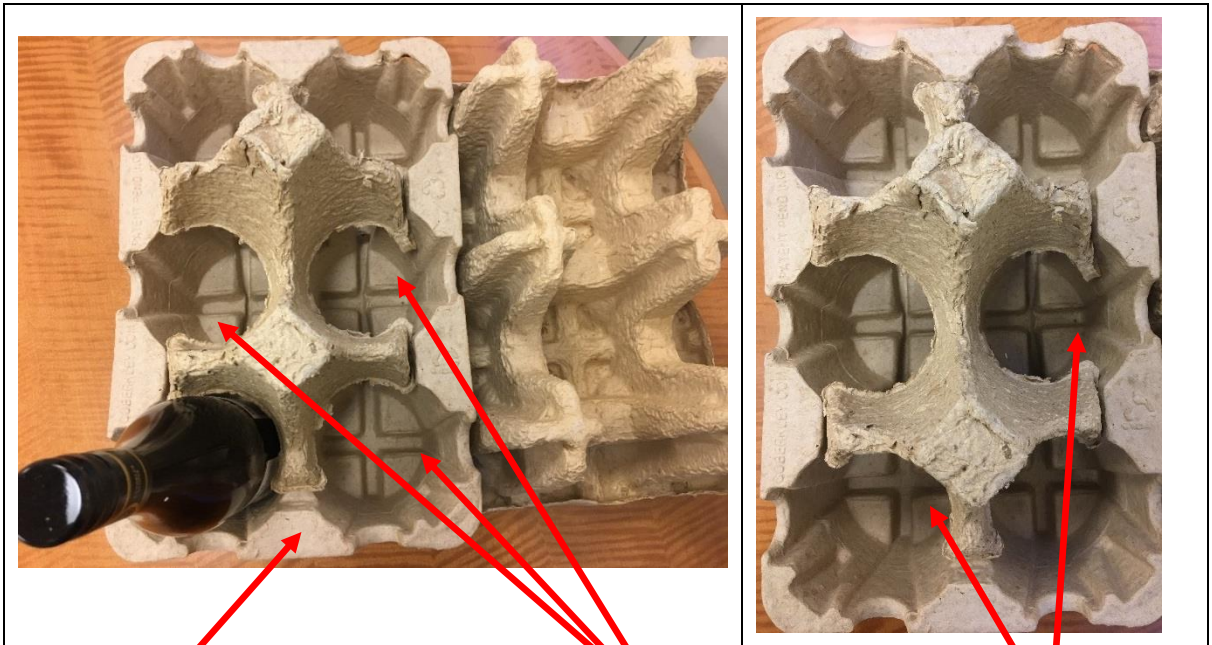
12 17. Claim 1 recites: "1. A beverage container packaging assembly  
13 comprising:" The Accused Product has this claim element as shown below.



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25 A beverage container packaging assembly comprising:

26 18. Claim 1 further recites: "a bottom tray of molded paper pulp including  
27 a plurality of cup-shaped elements, the cup-shaped elements configured to  
28 accommodate a bottom portion of a beverage container, each cup-shaped element

1 including one or more deformable elements forming a cross shape.” The Accused  
2 Product has this claim element as shown below.



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14 a bottom tray of  
molded paper pulp

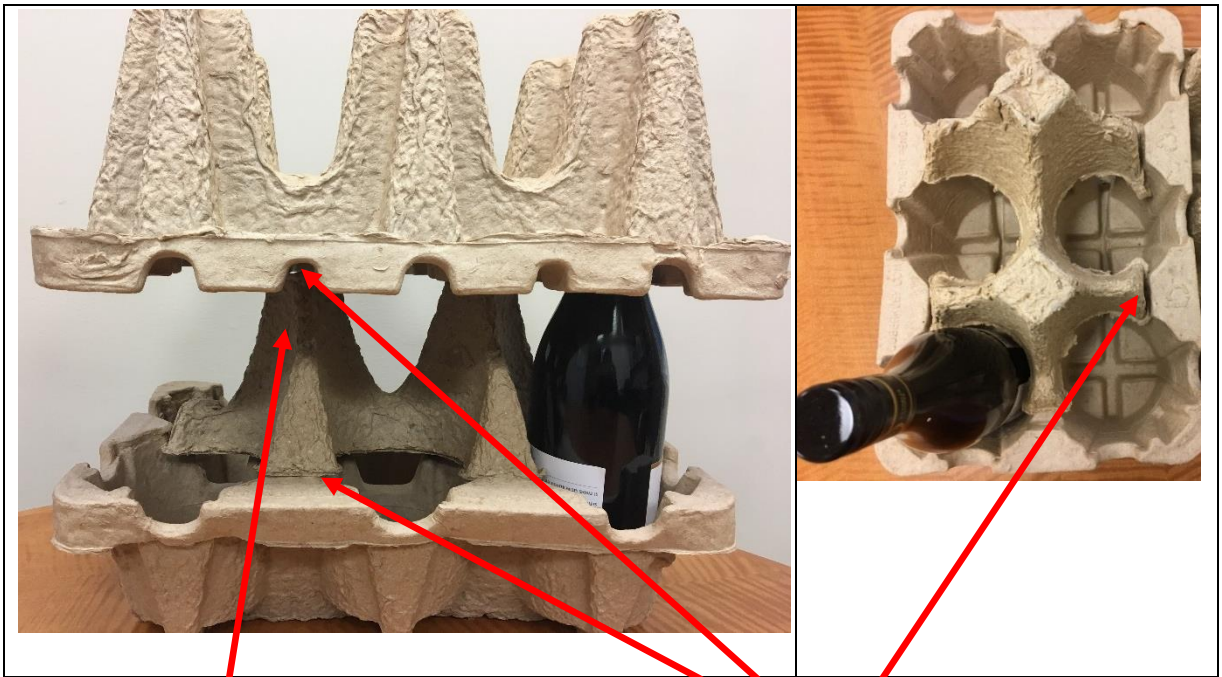
15 including a plurality of  
16 cup-shaped elements,  
17 the cup-shaped  
elements configured to  
accommodate a bottom  
portion of a beverage  
container,

18 each cup-shaped  
19 element including  
20 one or more  
21 deformable elements  
22 forming a cross  
shape

18 19. Claim 1 further recites: “a center support of molded paper pulp  
19 disposed between and in contact with the bottom tray and a top tray of molded  
20 paper pulp, the center support not extending to an outer edge of the beverage  
21 container packaging assembly, the center support including:” The Accused  
22 Product has this claim element as shown below.

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a center support of molded paper pulp

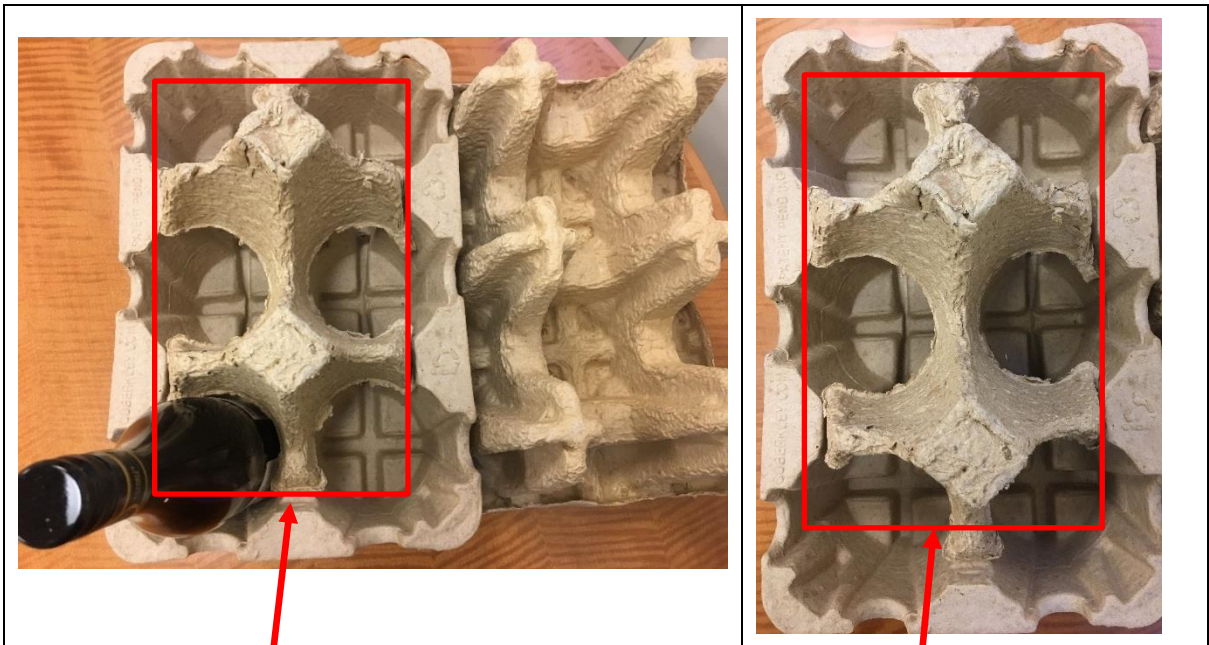
disposed between and in contact with the bottom tray and a top tray of molded paper pulp, the center support not extending to an outer edge of the beverage container packaging assembly, the center support including:

20. Claim 1 further recites, “a plurality of center support posts comprising at least one cross-shaped cavity.” The Accused Product has this claim element as shown below.

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a plurality of center support posts comprising

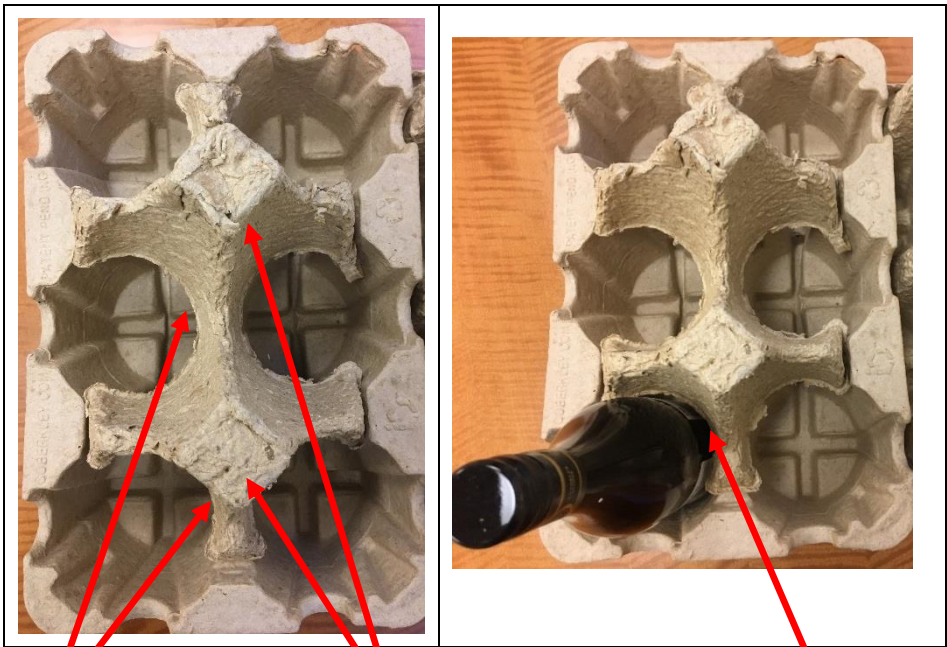
at least one cross-shaped cavity

21. Claim 1 further recites: “a plurality of beverage container support cavities bounded by the center support posts, the support cavities configured to surround at least a portion of the beverage container; and” The Accused Product has this claim element as shown below.

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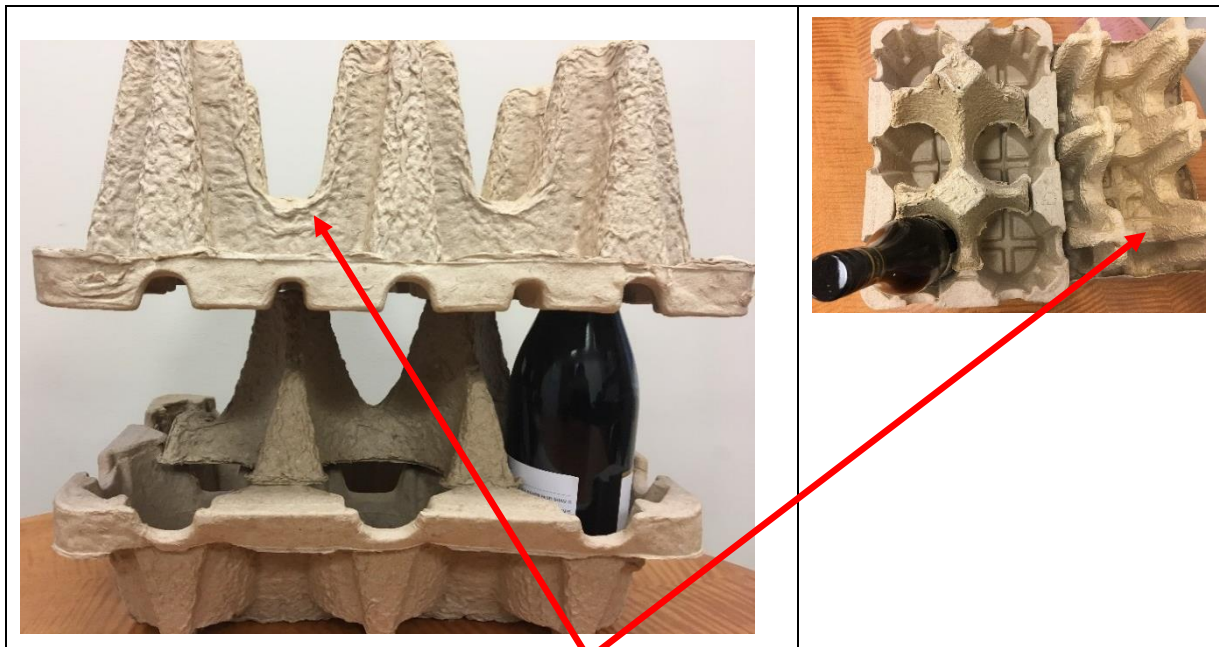
a plurality of beverage container support cavities

bounded by the center support posts,

the support cavities configured to surround at least a portion of the beverage container

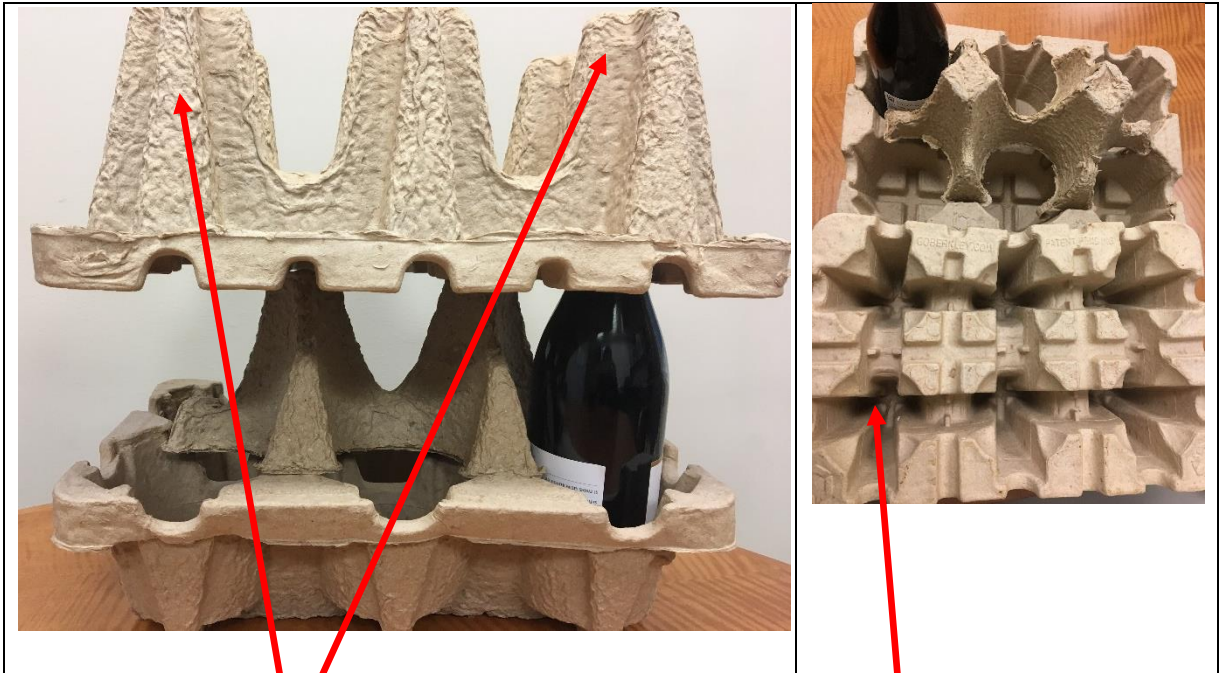
22. Claim 1 further recites: “the top tray of molded paper pulp including:”

The Accused Product has this claim element as shown below.



the top tray of molded paper pulp including:

1 23. Claim 1 further recites: “a plurality of vertical members comprising at  
2 least one deformable element; and.” The Accused Product has this claim element  
3 as shown below.



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15 a plurality of vertical  
16 members comprising

17 at least one deformable  
18 element

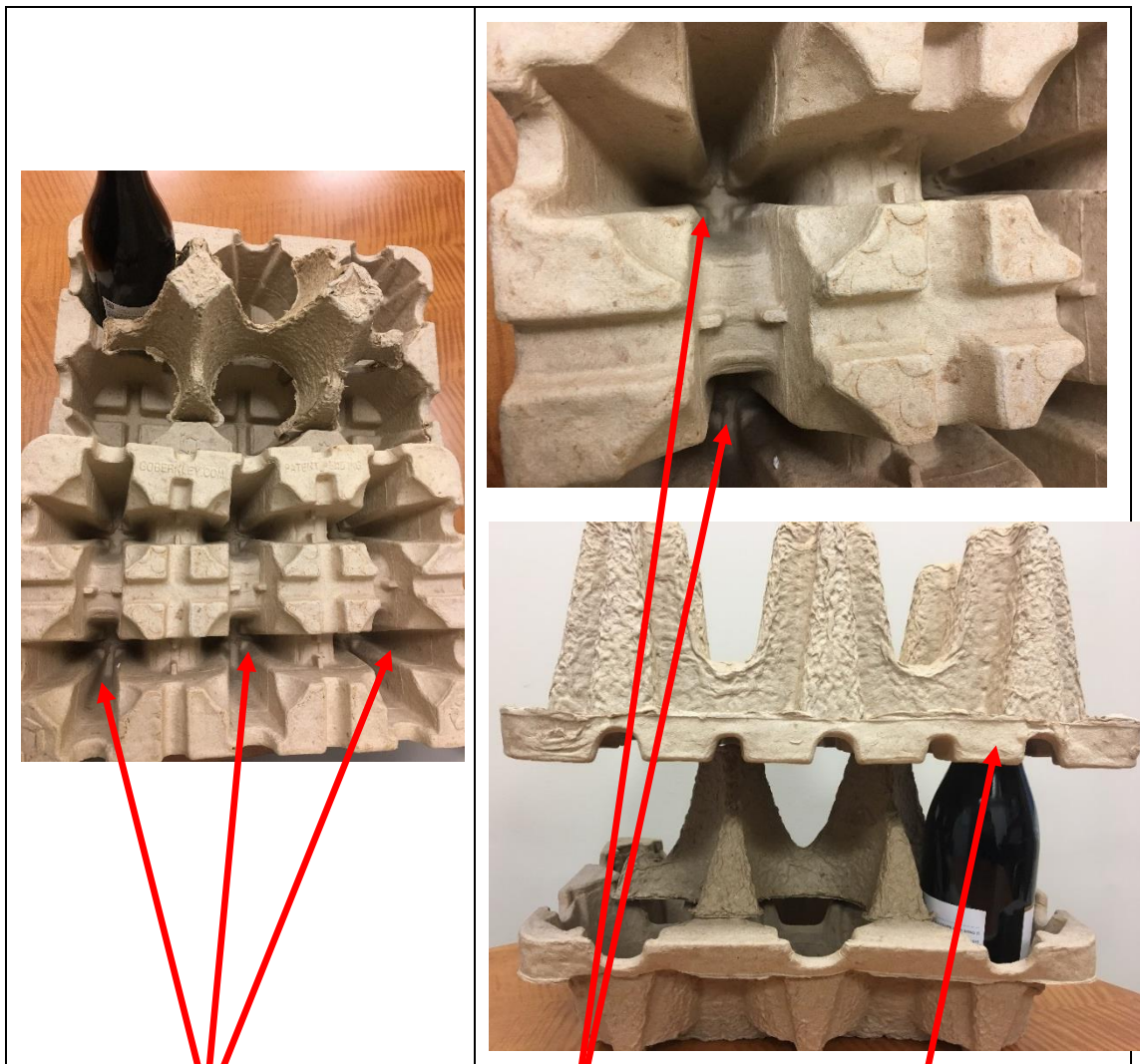
19 24. Claim 1 further recites: “a plurality of bottle neck accommodating  
20 spaces each bounded by the at least one deformable element, the bottle neck  
21 accommodating spaces each configured to accommodate a neck portion of the  
22 beverage container.” The Accused Product has this claim element as shown  
23 below.  
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a plurality of bottle neck accommodating spaces each bounded by the at least one deformable element

the bottle neck accommodating spaces

each configured to accommodate a neck portion of the beverage container

25. Defendants obtained knowledge of the '924 Patent at least as early as the receipt of the cease and desist letter (and detailed allegations therein).

26. Notwithstanding this knowledge, Defendants have knowingly or with reckless disregard willfully infringed the '924 Patent. Defendants have thus had actual notice of infringement of the '924 Patent and acted despite an objectively



1 high likelihood that its actions constituted infringement of Acorn's valid patent  
2 rights.

3 27. This objective risk was either known or so obvious that it should have  
4 been known to Defendants. Accordingly, Acorn seeks enhanced damages pursuant  
5 to 35 U.S.C. § 284.

6 **PRAYER FOR RELIEF**

7 28. WHEREFORE, Plaintiff demands judgment against Defendants as  
8 follows:

- 9 a. That it has jurisdiction of the parties and of the subject matter of this  
10 action;
- 11 b. That the '924 Patent is valid and owned by Plaintiff;
- 12 c. That Defendants have committed acts of patent infringement by their  
13 manufacture, importation, use, offer for sale and/or sale of the  
14 Accused Product;
- 15 d. That Defendants' infringement is willful;
- 16 e. That Defendants and all affiliates, subsidiaries, officers, employees,  
17 agents, representatives, licensees, successors, assigns, and all those  
18 acting in concert with, or for or on behalf of Defendants, be enjoined  
19 from further infringing the '924 Patent.
- 20 f. That Defendants be required by mandatory injunction to deliver up to  
21 Plaintiff for destruction any and all of the Accused Product in  
22 Defendants' possession, custody or control, as well as any  
23 promotional literature and packaging which display the Accused  
24 Product;
- 25 g. That Plaintiff be awarded damages covered by the acts of patent  
26 infringement of Defendants in an amount not less than a reasonable  
27 royalty pursuant to 25 U.S.C. § 284 or in an amount equal to  
28 Defendants' profits pursuant to 35 U.S.C. § 289, whichever is greater

- 1 and that such damages be trebled in accordance with the provisions of
- 2 35 U.S.C. § 284;
- 3 h. That Defendants pay Plaintiff prejudgment interest on all infringement
- 4 damages;
- 5 i. That Plaintiff recover their costs in this action, including attorneys’
- 6 fees; and
- 7 j. That Plaintiff has such other or further relief as the Court may deem
- 8 just and proper.

**JURY DEMAND**

9  
10 Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal  
11 Rules of Civil Procedure.

12  
13 DATED: December 20, 2018

VENABLE LLP

14 By: /s/ Sarah S. Brooks  
15 Sarah S. Brooks  
16 Attorneys for Plaintiff  
17 ACORN WEST LLC

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