

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

INLINE PLASTICS CORP.,
a Connecticut corporation,

Plaintiff,

v.

LACERTA GROUP INC
a Massachusetts corporation,

Defendant.

Civil Action No.: 1:18-cv-11631

JURY TRIAL DEMANDED

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Inline Plastics Corp. (hereinafter “Inline Plastics”) complains against Defendant Lacerta Group, Inc., as follows:

INTRODUCTION

1. Inline Plastics is an innovator in the packaging industry, particularly in the field of clear, disposable, secure containers for produce, deli products, baked goods, and other perishable foods. Relevant to this action, Inline Plastics invented and patented novel tamper-resistant and tamper-evident (“tamper-resistant/tamper-evident”) containers, which it sells under the SAFE-T-FRESH® brand name, among others. Due to the innovative, patented design and operation of these tamper-resistant/tamper-evident containers, Inline Plastics has become the market leader in the relevant product category. Lacerta sells competing packaging, including its “FRESH N’ SEALED” line of tamper resistant/tamper-evident containers. Inline Plastics accuses Lacerta of infringing three patents directed to these tamper-resistant/evident containers.

THE PARTIES

2. Plaintiff Inline Plastics is a Connecticut corporation having its principal place of business at 42 Canal Street, Shelton, Connecticut 06484 and has been engaged in the research, development, manufacture, and sales of thermoformed plastic containers for over 50 years.

3. Defendant Lacerta is, on information and belief, a Massachusetts corporation having its corporate headquarters located at 360 Forbes Boulevard, Mansfield, Massachusetts, 02048, and is engaged in the manufacture and sales of plastic containers.

JURISDICTION AND VENUE

4. This action is for patent infringement and arises under the patent laws of the United States, Title 35, United States Code. As such, this Court has proper, original and exclusive jurisdiction over the subject matter of this action based on 28 U.S.C. §§ 1331 (federal question), 1332 (diversity), and 1338 (patent actions).

5. This Court has personal jurisdiction over Lacerta under at least Mass. Gen. Laws Ch. 223A § 2 and § 3 because it is incorporated and has its principal place of business in Massachusetts and also makes, offers to sell, and sells infringing products in Massachusetts.

6. Venue is proper in this Court under the provisions of 28 U.S.C. § § 1391(b) and (c) and 1400(b) because Lacerta, a Massachusetts corporation based in Mansfield, MA, resides in this district and/or has a regular and established place of business here and, as detailed below, has committed acts of infringement here.

THE ASSERTED PATENTS

A. The '003 Patent

7. On October 10, 2006, the United States Patent & Trademark Office (“USPTO”) issued United States Patent No. 7,118,003, entitled “Tamper Resistant Container with Tamper-

Evident Feature and Method of Forming the Same” (“the ’003 Patent”). The named inventors are Robert Sellari, Peter Boback, and Bruce Stein, all of whom were employees of Inline Plastics. A copy of the ’003 Patent is attached as Exhibit A.

8. The inventors assigned their rights in the ’003 Patent to Inline Plastics, which owns the full rights, title, and interest in and to the ’003 Patent.

9. The ’003 Patent has not expired and is in full force and effect.

10. Pursuant to 35 U.S.C. § 282, the ’003 Patent and each of its claims are presumed valid.

11. Inline Plastics marks its tamper resistant/tamper-evident containers, such as its SAFE-T-FRESH[®] line of containers, with the ’003 Patent, either physically on the containers themselves or virtually, in compliance with 35 U.S.C. § 287(a), and thus gives at least constructive notice of the ’003 Patent to the public, including to Lacerta.

B. The ’680 Patent

12. On July 11, 2006, the USPTO issued United States Patent No. 7,073,680, entitled “Tamper-Resistant Container With Tamper-Evident Feature and Method of Forming The Same” (“the ’680 Patent”). The named inventors are Peter Boback, Robert Sellari, Bruce Stein, Daniel A. Landan, and Tadeusz J. Klimaszewski, all of whom were employees of Inline Plastics. A copy of the ’680 Patent is attached hereto as Exhibit B.

13. The inventors assigned their rights in the ’680 patent to Inline Plastics, which owns the full rights, title, and interest in and to the ’680 Patent.

14. The ’680 Patent has not expired and is in full force and effect.

15. Pursuant to 35 U.S.C. § 282, the ’680 Patent and each of its claims are presumed valid.

16. Inline Plastics marks its tamper resistant/tamper-evident containers, such as certain products in its SAFE-T-FRESH[®] line of containers, with the '680 Patent, either physically on the containers themselves or virtually, in compliance with 35 U.S.C. § 287(a), and thus gives at least constructive notice of the '680 Patent to the public, including to Lacerta.

C. The '756 Patent

17. On April 25, 2017, the USPTO issued United States Patent No. 9,630,756, entitled "Tamper-Resistant And Tamper Evident Containers" ("the '756 Patent"). The named inventors are Robert Sellari, Peter Boback, Bruce K. Stein, Daniel A. Landan and Tadeusz J. Klimaszewski, all of whom were employees of Inline Plastics. A copy of the '756 Patent is attached hereto as Exhibit C.

18. The inventors assigned their rights in the '756 Patent to Inline Plastics, which owns the full rights, title, and interest in and to the '756 Patent.

19. The '756 Patent has not expired and is in full force and effect.

20. Pursuant to 35 U.S.C. § 282, the '756 Patent and each of its claims are presumed valid.

21. Inline Plastics marks its tamper resistant/tamper-evident containers, such as its SAFE-T-FRESH[®] line of containers, with the '756 Patent, either physically on the containers themselves or virtually, in compliance with 35 U.S.C. § 287(a), and thus gives at least constructive notice of the '680 Patent to the public, including to Lacerta.

D. The '580 Patent

22. On August 5, 2014, the USPTO issued United States Patent No. 8,795,580, entitled "Methods of Manufacturing Tamper-Resistant and Tamper Evident Containers" ("the '580 Patent"). The named inventors are Robert Sellari, Peter Boback, Bruce Stein, Daniel

Landan, and Tadeusz Klimaszewski, all of whom were employees of Inline Plastics. A copy of the '580 Patent is attached hereto as Exhibit D.

23. The inventors assigned their rights in the '580 Patent to Inline Plastics, which owns the full rights, title, and interest in and to the '580 Patent.

24. The '580 Patent has not expired and is in full force and effect.

25. Pursuant to 35 U.S.C. § 282, the '580 Patent and each of its claims are presumed valid.

26. Inline Plastics marks its tamper resistant/tamper-evident containers, such as its SAFE-T-FRESH[®] line of containers, with the '580 Patent, either physically on the containers themselves or virtually, in compliance with 35 U.S.C. § 287(a), and thus gives at least constructive notice of the '580 Patent to the public, including to Lacerta.

E. The '640 Patent

27. On December 27, 2016, the USPTO issued United States Patent No. 9,527,640 entitled "Methods of manufacturing Tamper-Resistant and Tamper Evident Containers" ("the '640 Patent"). The named inventors are Robert Sellari, Peter Boback, Bruce Stein, Daniel Landan, and Tadeusz Klimaszewski, all of whom were employees of Inline Plastics. A copy of the '640 Patent is attached hereto as Exhibit E.

28. The inventors assigned their rights in the '640 Patent to Inline Plastics, which owns the full rights, title, and interest in and to the '640 Patent.

29. The '640 Patent has not expired and is in full force and effect.

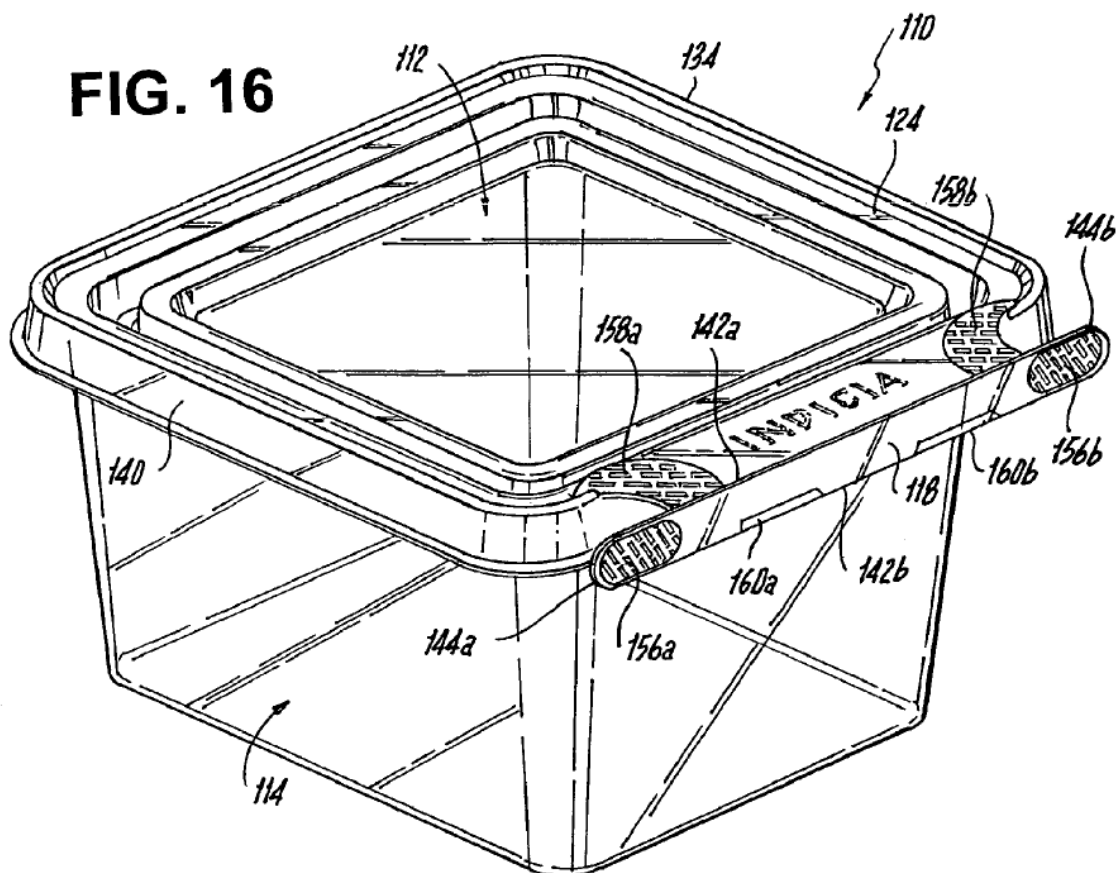
30. Pursuant to 35 U.S.C. § 282, the '640 Patent and each of its claims are presumed valid.

31. Inline Plastics marks its tamper resistant/tamper-evident containers, such as its

SAFE-T-FRESH[®] line of containers, with the '640 Patent, either physically on the containers themselves or virtually, in compliance with 35 U.S.C. § 287(a), and thus gives at least constructive notice of the '640 Patent to the public, including to Lacerta.

THE ACCUSED PATENT INFRINGEMENT



32. Inline Plastics makes and sells numerous tamper-resistant/tamper-evident containers, in a variety of sizes and configurations, embodying or manufactured using one or more claims of the five patents-in-suit. Inline Plastics sells these patented containers under the SAFE-T-FRESH[®] brand name, among others. One distinguishing feature of these containers is the frangible hinge which can be in the form of a tear strip that must be at least partially severed or removed to facilitate opening the lid of the container. The severing or removal of the tear strip also functions as a visual indication of tampering with the container. Figure 16, which is common to all three patents, shows one possible embodiment of the patented containers and is depicted below:



33. Lacerta is, without authority, making, using, offering to sell, and/or selling plastic, tamper-resistant/tamper-evident containers, including, but not limited to, the tamper-resistant/tamper-evident containers marketed under the “FRESH N’ SEALED” brand name including tamper-resistant/tamper-evident containers marked with the product identification numbers TE-RT-64, TE-RT-120, TE-RT-16, TE-RPF-9, and TE-WR-SM (collectively, the “Accused Products”) that infringe, or are made using methods that infringe, one or more claims of Inline Plastics’ five patents-in-suit. Lacerta’s Accused Products compete directly with the tamper-resistant/tamper-evident containers made and sold by Inline Plastics. Indeed, on information and belief, as a direct consequence of Lacerta’s infringing activities, Inline Plastics has lost sales of its patented tamper-resistant containers to customers in Massachusetts and

throughout the United States, such as the Massachusetts convenience store chain Cumberland Farms.

34. Shown below are samples of an Inline Plastics’ SAFE-T-FRESH tamper-resistant/tamper-evident container and a competing and infringing Lacerta FRESH N’ SEALED tamper resistant/tamper-evident container:

Inline Plastics SAFE-T-FRESH® container	Lacerta “FRESH N’ SEALED container
	

35. Attached as Exhibit F are claim charts showing exemplary infringement of Claim 1 of each of the five asserted patents-in-suit by a representative of Lacerta’s Accused Products. While the Accused Products appear to differ in size and styles (*e.g.*, some are round and some are rectangular and some have multiple sub-compartments), they all appear to have the same configuration and features that are relevant to the patent claims. Accordingly, for purposes of this complaint only, the sample Lacerta product represented in the claim charts exemplifies the

infringement of the other Accused Products. In addition, while the claim charts show infringement of just Claim 1 of each patent, more claims of each patent are infringed. These claim charts are based on preliminary analysis and may be amended and/or supplemented after further investigation and discovery in this action, including when Inline Plastics serves its infringement contentions per D. Mass. Local Rule 16.6(d)(1)(A). The claim chart is for notice purposes under Fed. R. Civ. P. 8 and 12. The claim charts in Exhibit D are incorporated by reference into the allegations of this complaint.

COUNT I - INFRINGEMENT OF THE '003 PATENT

36. Inline Plastics re-alleges and incorporates by reference the preceding paragraphs as though fully set out herein.

37. In violation of 35 U.S.C. § 271, Lacerta has been infringing, and continues to infringe, the '003 Patent by way of manufacturing, using, offering to sell, and/or selling within the United States and without authority Accused Products that are covered by one or more of the claims of the '003 Patent.

38. Lacerta had at least constructive notice of the '003 Patent pursuant to 35 U.S.C. §287(a) because Inline Plastics marks its tamper resistant/tamper-evident containers with the '003 Patent. Further, on March 29, 2006, Lacerta cited the U.S. Patent Publication No. 2005/0017007, which issued as the '003 Patent, during the prosecution of its currently pending U.S. Patent Application Serial No. 14/872,106. Thus, Lacerta may have had actual knowledge of the '003 Patent.

39. Lacerta has profited, and continues to profit, from its manufacture, use, offer to sell, and sale of the Accused Products.

40. On information and belief, Lacerta's infringement of the '003 Patent has been

and continues to be willful, wanton, and deliberate.

41. Inline Plastics has been, and continues to be, damaged and irreparably harmed by Lacerta's infringement of the '003 Patent.

COUNT II- INFRINGEMENT OF THE '680 PATENT

42. Inline Plastics re-alleges and incorporates by reference the preceding paragraphs as though fully set out herein.

43. In violation of 35 U.S.C. § 271, Lacerta has been infringing, and continues to infringe, the '680 Patent by way of manufacturing, using, offering to sell, and/or selling, within the United States and without authority, Accused Products that are covered by one or more of the claims of the '680 Patent.

44. Lacerta had at least constructive notice of the '680 Patent pursuant to 35 U.S.C. §287(a) because Inline Plastics marks its tamper resistant/tamper-evident containers with the '680 Patent. Further, on March 29, 2006, Lacerta cited the '680 Patent during the prosecution of its currently pending U.S. Patent Application Serial No. 14/872,106. Thus, Lacerta may have had actual knowledge of the '680 Patent.

45. Lacerta has profited, and continues to profit, from its manufacture, use, offer to sell, and sale of the Accused Products.

46. On information and belief, Lacerta's infringement of the '680 Patent has been and continues to be willful, wanton, and deliberate.

47. Inline Plastics has been, and continues to be, damaged and irreparably harmed by Lacerta's infringement of the '680 Patent.

COUNT III - INFRINGEMENT OF THE '756 PATENT

48. Inline Plastics re-alleges and incorporates by reference the preceding paragraphs

as though fully set out herein.

49. In violation of 35 U.S.C. § 271, Lacerta has been infringing, and continues to infringe, the '756 Patent by way of manufacturing, using, offering to sell, and/or selling, within the United States and without authority, Accused Products that are covered by one or more of the claims of the '756 Patent.

50. Lacerta had at least constructive notice of the '680 Patent pursuant to 35 U.S.C. §287(a) because Inline Plastics marks its tamper resistant/tamper-evident containers with the '756 Patent.

51. Lacerta has profited, and continues to profit, from its manufacture, use, offer to sell, and sale of the Accused Products.

52. On information and belief, Lacerta's infringement of the '756 Patent has been and continues to be willful, wanton, and deliberate.

53. Inline Plastics has been, and continues to be, damaged and irreparably harmed by Lacerta's infringement of the '756 Patent.

COUNT IV – INFRINGEMENT OF THE '580 PATENT

54. Inline Plastics re-alleges and incorporates by reference the preceding paragraphs as through fully set out herein.

55. In violation of 35 U.S.C. § 271, Lacerta has been infringing, and continues to infringe, the '580 Patent by way of manufacturing, using, offering to sell, and/or selling, within the United States and without authority, Accused Products made using the methods covered by one or more of the claims of the '580 Patent.

56. Lacerta had at least constructive notice of the '580 Patent pursuant to 35 U.S.C. § 287(a) because Inline Plastics marks its tamper resistant/tamper-evident containers with the

‘580 Patent.

57. Lacerta has profited, and continues to profit, from its manufacture, use, offer to sell, and sale of the Accused Products.

58. On information and belief, Lacerta’s infringement of the ‘580 Patent has been and continues to be willful, wanton, and deliberate.

59. Inline Plastics has been, and continues to be, damaged and irreparably harmed by Lacerta’s infringement of the ‘580 Patent.

COUNT V – INFRINGEMENT OF THE ‘640 PATENT

60. Inline Plastics re-alleges and incorporates by reference the preceding paragraphs as through fully set out herein.

61. In violation of 35 U.S.C. § 271, Lacerta has been infringing, and continues to infringe, the ‘640 Patent by way of manufacturing, using, offering to sell, and/or selling, within the United States and without authority, Accused Products made using the methods covered by one or more of the claims of the ‘640 Patent.

62. Lacerta had at least constructive notice of the ‘640 Patent pursuant to 35 U.S.C. § 287(a) because Inline Plastics marks its tamper resistant/tamper-evident containers with the ‘640 Patent.

63. Lacerta has profited, and continues to profit, from its manufacture, use, offer to sell, and sale of the Accused Products.

64. On information and belief, Lacerta’s infringement of the ‘640 Patent has been and continues to be willful, wanton, and deliberate.

65. Inline Plastics has been, and continues to be, damaged and irreparably harmed by Lacerta’s infringement of the ‘640 Patent.

DEMAND FOR JURY TRIAL

66. Pursuant to Rule 38 of the Federal Rule of Civil Procedure, Inline Plastics demands trial by jury on all claims asserted herein.

PRAYER FOR RELIEF

67. WHEREFORE, Inline Plastics requests judgment in its favor, including:
- A. Judgment that Lacerta has infringed and/or is infringing the '003 patent in violation of 35 U.S.C. § 271;
 - B. Judgment that Lacerta has infringed and/or is infringing the '680 patent in violation of 35 U.S.C. § 271;
 - C. Judgment that Lacerta has infringed and/or is infringing the '756 patent in violation of 35 U.S.C. § 271;
 - D. Judgment that Lacerta has infringed and/or is infringing the '580 patent in violation of 35 U.S.C. § 271;
 - E. Judgment that Lacerta has infringed and/or is infringing the '640 patent in violation of 35 U.S.C. § 271;
 - F. Judgment that Lacerta's infringement of the '003, '680, '756, '580, and '640 patents has been willful;
 - G. An award of damages under 35 U.S.C. § 284 adequate to compensate Inline Plastics for Lacerta's infringement of the '003 Patent and an accounting to determine the proper amount of such damages;
 - H. An award of damages under 35 U.S.C. § 284 adequate to compensate Inline Plastics for Lacerta's infringement of the '680 Patent and an accounting to determine the proper amount of such damages;

- I. An award of damages under 35 U.S.C. § 284 adequate to compensate Inline Plastics for Lacerta's infringement of the '756 Patent and an accounting to determine the proper amount of such damages;
- J. An award of damages under 35 U.S.C. § 284 adequate to compensate Inline Plastics for Lacerta's infringement of the '580 Patent and an accounting to determine the proper amount of such damages
- K. An award of damages under 35 U.S.C. § 284 adequate to compensate Inline Plastics for Lacerta's infringement of the '640 Patent and an accounting to determine the proper amount of such damages
- L. A three-fold increase in damages as a result of Lacerta's willful, wanton, and deliberate acts of infringement;
- M. An award pursuant to 35 U.S.C. § 284 of costs, prejudgment, and post judgment interest on Inline Plastics' compensatory damages;
- N. An award pursuant to 35 U.S.C. § 285 of Inline Plastics' attorneys' fees incurred in this action;
- O. An order under 35 U.S.C. § 283 preliminarily and permanently enjoining Lacerta, including its officers, agent, attorneys, employees, or anyone acting in privity or concert with them, from infringing the '003, '680, '756, 580, and/or '640 Patents;
- P. An order requiring Lacerta to surrender for destruction or other disposition, at the election of Inline Plastics, of the manufacturing tooling, materials, prints, specifications, drawings, molds, extrusions, dies, castings, prototypes, computer programs, manuals, programs, models, all components and assemblies in all states, and any and all inventory of articles that infringe the patents-in-suit.

Q. An award of such further and other relief as this Court may deem just and proper.

Dated: May 17, 2019

Respectfully submitted,
INLINE PLASTICS CORP.,
By its attorneys,

/s/ David J. Silvia
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on the above date.

/s/ Thomas F. Foley
Thomas F. Foley