

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MASONTOPS, INC.

Plaintiff,

v.

AMAZON.COM, INC., and SOLIGT, INC.

Defendants

Case No.

Judge:

Jury Trial Demanded

COMPLAINT

THE PARTIES

1. Plaintiff, Masontops, Inc. (“Masontops”) is a corporation organized under the laws of the country of Canada, province of Ontario, with its principal place of business at 21-620 Supertest Road, Toronto, Ontario M3J 2M5 Canada.

2. Amazon.com, Inc. (“Amazon”) is a corporation organized under the laws of the State of Delaware and having a corporate headquarters address of 410 Terry Avenue North, Seattle, Washington 98109. Amazon engages in the retail sale of consumer products in North America and internationally. The company sells merchandise purchased for resale from vendors, and those offered by third-party sellers through retail websites, operated by Amazon.com, Inc., such as www.amazon.com.

3. On information and belief, a reasonable opportunity for discovery is likely to show that Amazon operates a wholly owned subsidiary, Amazon.com Services, Inc., that performs the same business as Amazon.com in this district and acts as Amazon’s agent in this district.

4. Soligt, Inc. (“Soligt”) is a corporation organized under the laws of the State of New York, and has a corporate address of 72 Elizabeth Street, Kingston, New York 12401. Soligt sells and markets products through retail websites such as www.amazon.com.

JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 271 et seq.

6. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

7. This Court has specific personal jurisdiction over each Defendant because each Defendant has committed and continues to commit acts of infringement in violation of 35 U.S.C. § 271, and offers for sale or sells, or aids, abets, and induces the sale and offer for sale, of infringing products in the State of Illinois and to residents of the State of Illinois, including in this District. The acts by each Defendant injure Plaintiff within this District. Upon information and belief, each Defendant derives substantial revenue from the infringing products within this District, expects its actions to have consequences within this District, and derives substantial revenue from sales in this District.

8. The Court has general personal jurisdiction over Defendant Amazon because its affiliations with Illinois and this District are so continuous and systematic as to render Amazon essentially at home in Illinois and this District, given Amazon’s large and continuous sales and distribution operations in this District.

9. Soligt, by its agreements with Amazon, is effectively operating a place of business in Illinois by utilizing Amazon’s distribution and fulfillment system to provide Soligt with a regular and established place of business in this district.

10. Venue is proper within this District under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

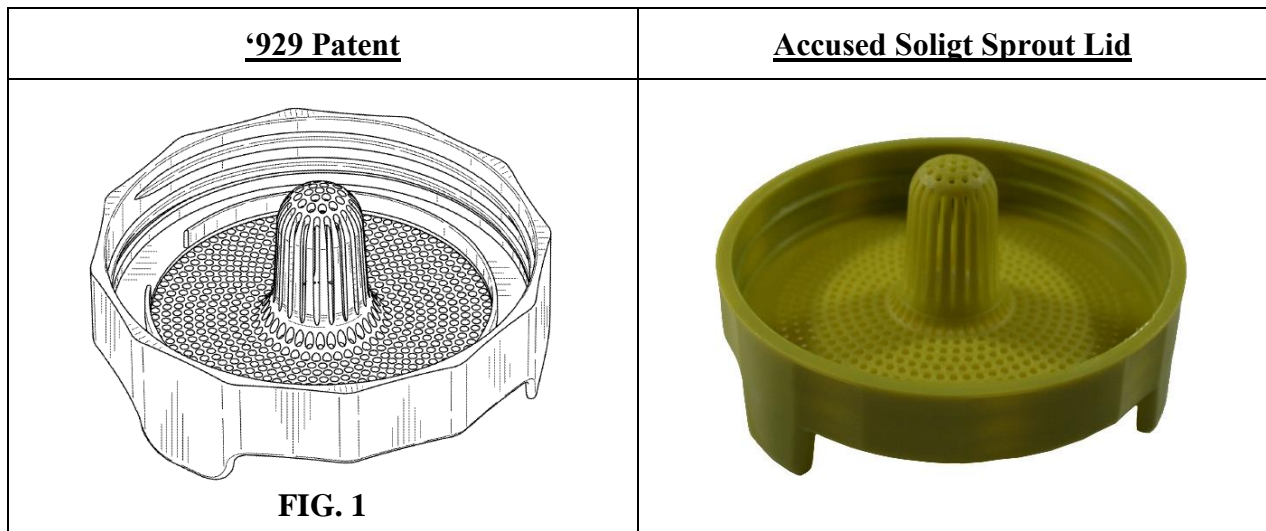
THE ACCUSED PRODUCT AND NOTICE TO THE DEFENDANTS

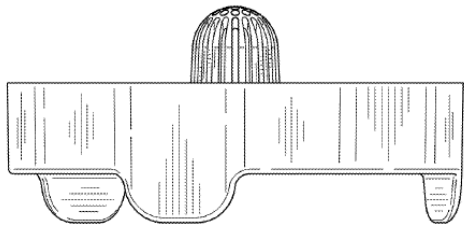

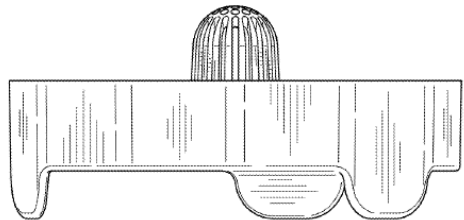

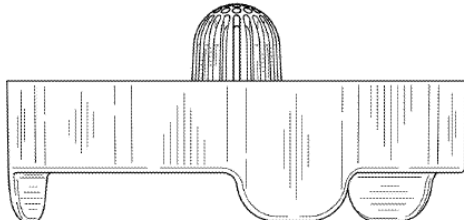

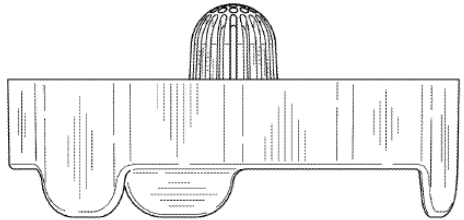

11. Masontops is the owner by assignment of U.S. Design Patent D854,929 (“the ‘929 patent”), a copy of which is attached as Exhibit A.

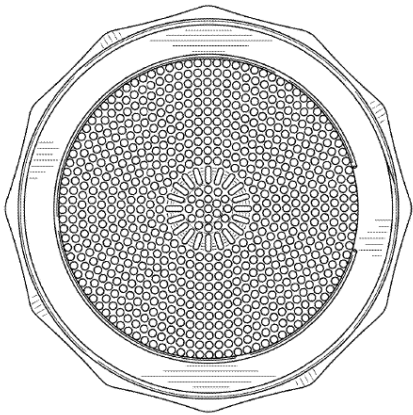

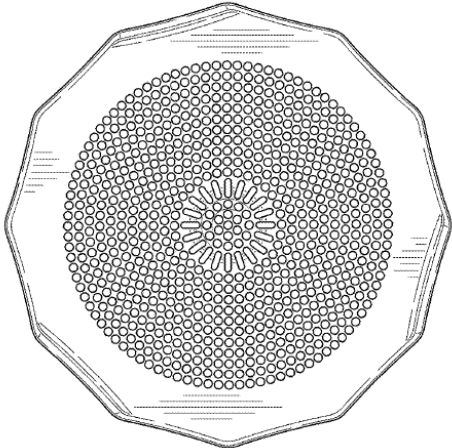

12. U.S. Design Patent D854,929 was issued on July 30, 2019 and claims a design for a Sprout Lid for Container.

13. Defendant Amazon markets and sells the Soligt Easy Rinse & Drain Sprouting Lids for Wide Mouth Mason Jars (“Soligt Sprout Lid”) via its website www.amazon.com under number ASIN# B07KVL25SR. See Ex. B. On www.amazon.com, the accused products are stated to be “fulfilled by” Amazon.

14. Defendant Soligt markets and sells Soligt Easy Rinse & Drain Sprouting Lids for Wide Mouth Mason Jars (“Soligt Sprout Lid”). See Ex. C. Below is a side-by-side visual comparison of the figures of the ‘929 patent with the accused product.



<u>'929 Patent</u>	<u>Accused Soligt Sprout Lid</u>
 <p>FIG. 2</p>	
 <p>FIG. 3</p>	
 <p>FIG. 4</p>	
 <p>FIG. 5</p>	

<u>‘929 Patent</u>	<u>Accused Soligt Sprout Lid</u>
 <p data-bbox="456 730 550 764">FIG. 6</p>	
 <p data-bbox="456 1335 550 1369">FIG. 7</p>	

15. Amazon sells, offers for sale, and exposes for sale the Soligt Sprout Lids without authorization of Plaintiff.

16. Soligt sells, offers for sale, exposes for sale and imports the Soligt Sprout Lids without authorization of Plaintiff.

17. Plaintiff has placed the Defendants on notice of the infringement of the ‘929 patent on multiple occasions yet Defendants continue to infringe. On ten (10) occasions, Plaintiff lodged complaints with Amazon using Amazon’s intellectual property dispute resolution process

demanding that the listing from the Soligt Sprout Lid be taken down and that Amazon no longer permit the product to be relisted. For each complaint, Amazon assigned Masontops' submissions a "Complaint ID."

18. Below is a listing of the ten (10) Complaint IDs:

- Amazon Complaint ID 6304769051, dated July 30, 2019 (no take down);
- Amazon Complaint ID 6312004511, dated August 1, 2019 (take down);
- Amazon Complaint ID 6380809871, dated August 22, 2019 (take down);
- Amazon Complaint ID 6397585131, dated August 28, 2019 (take down);
- Amazon Complaint ID 6414188731, dated September 3, 2019 (no take down);
- Amazon Complaint ID 6447605121, dated September 17, 2019 (take down);
- Amazon Complaint ID 6450183181, dated September 18, 2019 (no take down);
- Amazon Complaint ID 6530663441, dated September 25, 2019 (no take down);
- Amazon Complaint ID 6470352121, dated September 26, 2019 (no take down);
- Amazon Complaint ID 6585959161, dated November 12, 2019 (no take down).

19. All of Masontops above ten (10) complaints stated the identical allegation, namely, that the Soligt Sprout Lid, sold under ASIN #B07KVL25SR, infringed the '929 design patent. Nevertheless, Amazon's responses to these complaints have wildly vacillated. On some occasions, Amazon concluded that there was infringement and took down the listing for the Soligt Sprout Lid. However, on other occasions (and in response to the *identical* complaint), Amazon concluded that there was no infringement and refused to take down the listing. Still further, on other occasions, Amazon ignored the complaints all together.

20. Amazon's intellectual property dispute resolution process is deeply flawed. Amazon is aware that it is deeply flawed, continuing to sell and let others sell infringing product on its website amazon.com.

21. Specifically, in response to four (4) of Masontops' Complaints, after reviewing the Soligt Sprout Lid product and '929 patent, Amazon notified Masontops that it was taking down the listing. Within a day of such notice, the listing was taken down. Those "successful" Complaint ID were Amazon Complaint ID 6312004511, Amazon Complaint ID 6380809871, Amazon Complaint ID 6397585131 and Amazon Complaint ID 6447605121.

22. After each take down, however, and sometimes within a single day, the Soligt Sprout Lid was back for sale on Amazon.com under the *identical* product listing with the *identical* product number (ASIN #B07KVL25SR). When the infringing product would reappear on Amazon.com, Masontops again would bring the matter to Amazon's attention lodging yet another complaint. With each subsequent complaint, Masontops would mention the previous complaints and Amazon's previous conclusions of infringement and the resultant take down. Notwithstanding Masontops' mention, in its responses, Amazon would never acknowledged this prior history.

23. On other occasions, and in response to the *identical* Masontops' Complaint, Amazon would not take down the listing, briefly reasoning that there was no infringement (even though it had already concluded on multiple occasions that there was infringement) or providing no reason at all for the inaction. On other occasions, Amazon has failed to respond to the notice in any fashion.

24. Amazon has been, and is, on notice that the Soligt Sprout Lid products infringe the '929 patent. Nevertheless, Amazon continues to maintain the listing for the product on

amazon.com. In the instances where it has taken the listing down, it has permitted its reposting shortly thereafter.

25. All told Amazon's responses to Masontops multiple and identical infringement complaints has been incoherent and amounts to willful failure to take due care when on notice of another's intellectual property rights. Amazon has responded in inconsistent and ineffective ways ranging from a refusal by Amazon to take action at all to agreement to "take down" the infringing sales offers by Soligt, followed by the immediate reposting of the identical product with the identical Amazon product identifying number (ASIN # B07KVL25SR) in as little as a single day.

26. Defendant Amazon was again notified by way of letter dated September 25, 2019 of Plaintiff's infringement allegations. Defendant Amazon did not respond to the letter.

27. Defendant Soligt was notified by way of letter dated February 20, 2019, of the infringing sales, and asked to respond to the allegations by no later than March 8, 2019.

28. Defendant Soligt did not respond to the February 20, 2019 letter.

29. Defendant Soligt was notified again by way of letter dated March 12, 2019, of the infringing sales, and asked to respond to the allegations by no later than March 20, 2019.

30. Defendant Soligt did not respond to the March 12, 2019 letter.

31. Despite being notified of its infringing activities, Defendant Soligt has continued to offer for sale and sell the accused products.

**FIRST CLAIM FOR RELIEF
(Infringement of U.S. Design Patent D854,929)**

32. Plaintiff incorporates and realleges paragraphs 1 through 22 of this Complaint.

33. Each of the Defendants has committed acts of infringement under 35 U.S.C. § 271(a) and continues to infringe U.S. Design Patent D854,929 by using, selling and/or offering to

sell in the United States, and/or importing into the United States Soligt Sprout Lid with substantially the same design as that claimed in U.S. Design Patent D854,929.

34. Amazon is also liable under 35 U.S.C. §271(b) for inducing or aiding and abetting the infringement of Soligt. Amazon provides advertising, technical, and order processing support for the infringing Soligt Sprout Lids through its platform, and benefits directly or indirectly from sales of the accused article on the Amazon platform.

35. Amazon is also liable under 35 U.S.C. §289 for selling and exposing for sale the Soligt Sprout Lid.

36. Amazon's infringement is willful. Amazon's "intellectual property dispute" resolution process is ineffective and not designed or operated in a reasonable and prudent way to respect the intellectual property rights of third parties generally, and specifically, the intellectual property rights of Masontops.

37. Each of the Defendants was notified of its infringing activities, but has continued its infringing acts with no good faith belief that its activities are non-infringing or that the U.S. Patent No. D854,929 is not valid, and therefore, each of the Defendants' infringement is willful.

JURY DEMAND

Plaintiff demands a jury trial on all issues triable to a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief:

1. A judgment that each of the Defendants has infringed U.S. Patent No. D854,929;
2. An order and judgment permanently enjoining each Defendant and its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in

concert with them, and their parents, subsidiaries, divisions, successors and assigns, from further acts of infringement of U.S. Patent No. D854,929;

3. An order requiring Amazon to certify, every three months, that it is in compliance with the injunction and detailing the steps it has taken to ensure that Soligt's infringing products are not posted on its platform;

4. A judgment awarding Plaintiff all damages adequate to compensate for Soligt's infringement of the asserted patent, including the disgorgement of total profits under 35 U.S.C. § 289.

5. A judgment awarding Plaintiff all damages, costs, and interest, including treble damages, based on any infringement found to be willful, under 35 U.S.C. § 284, with prejudgment interest.

6. An accounting of each of the Defendants' profits.

7. A judgment declaring this case to be exceptional and awarding Plaintiff its reasonable attorneys' fees under 35 U.S.C. § 285; and

8. Awarding Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,

November 14, 2019

/s/ Gregory C. Schodde

Christopher V. Carani (No. 6269503)

Gregory C. Schodde (No. 6209967)

Dunstan H. Barnes (No. 6312309)

McAndrews, Held & Malloy, Ltd.

500 West Madison Street, 34th Floor

Chicago, Illinois 60661

(312) 775-8000

CCarani@mcandrews-ip.com

GSchodde@mcandrews-ip.com

DBarnes@mcandrews-ip.com

Attorneys for Plaintiff,
Masontops, Inc.