

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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|------------------------|---|--------------------------------|
| _____ |) | |
| PACTIV EVERGREEN INC., |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| v. |) | Civil Action No. 3:20-cv-01668 |
| |) | |
| INLINE PLASTICS CORP., |) | |
| |) | |
| Defendant |) | |
| _____ |) | |

COMPLAINT

NOW COMES, by and through its undersigned attorneys, Plaintiff, Pactiv Evergreen Inc. (“Pactiv”), who alleges as its Complaint against Defendant, Inline Plastics Corp. (“Inline”) as follows:

NATURE OF THE ACTION

1. This is an action for a declaratory judgment of non-infringement and invalidity of United States Patent Nos. 7,118,003 (the “’003 Patent,” attached as **Exhibit 1**) and 9,630,756 (the “’756 Patent,” attached as **Exhibit 2**) (collectively, the “Patents-in-Suit”) arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the patent laws of the United States, 35 U.S.C. § 1 et seq.

2. Pactiv also seeks a declaratory judgment that Pactiv has not breached the [REDACTED] Agreement (*see* **Exhibit 3**) between the parties [REDACTED].

3. Pactiv also seeks a declaratory judgment that Inline’s sole remedy should Pactiv be found to infringe the Patents-in-Suit is payment of [REDACTED]
[REDACTED]

THE PARTIES

4. Pactiv is a Delaware corporation having its principal place of business at 1900 West Field Court, Lake Forest, Illinois 60045

5. Upon information and belief, Inline is a Connecticut corporation having its principal place of business at 42 Canal Street East, Shelton, CT 06484.

JURISDICTION AND VENUE

6. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the patent laws of the United States, 35 U.S.C. § 1 *et seq.* The action is a matter arising under the patent laws, 35 U.S.C. § 1, *et seq.*, due to Inline's assertion of infringement of the Patents-in-Suit against Pactiv.

7. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338(a) (patents). This Court also has supplemental jurisdiction under 28 U.S.C. § 1367 with respect to the [REDACTED] Agreement dispute between the parties.

8. This Court also has jurisdiction to declare the rights of the parties under 28 U.S.C. § 2201(a) because an actual case or controversy exists as to whether Pactiv infringes the Patents-in-Suit and whether Pactiv has breached the [REDACTED] Agreement, and because Inline has threatened action against Pactiv for infringement of the Patents-In-Suit that is imminent and real, and there is substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

9. This Court has general and specific personal jurisdiction over Inline because, *inter alia*, upon information and belief, Inline is a registered corporation within this District, maintains its principal place of business in this District, supplies products in this District, and it is reasonable and fair to subject Inline to jurisdiction in this District.

10. Venue is proper in this District under at least 28 U.S.C. §§ 1391(b) and (c) and § 1400(b) because, upon information and belief, Inline is a registered corporation within this District, maintains its principal place of business in this District, has a regular and established presence in this District, and supplies products in this District.

THE PATENTS-IN-SUIT

11. The '003 Patent is titled Tamper Resistant Container with Tamper-Evident Feature and Method of Forming the Same.

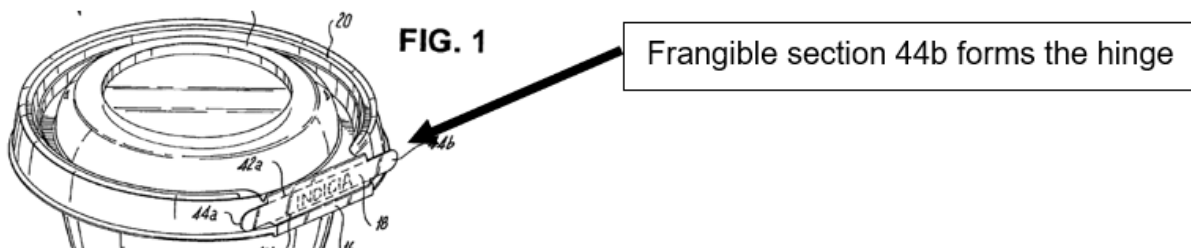
12. The '756 Patent is titled Tamper-Resistant and Tamper Evident Containers.

13. Upon information and belief, Inline is the sole owner and assignee of the '003 and '756 Patents.

14. The Patents-in-Suit are both directed to a tamper-resistant container that has a feature on its hinge that allows consumers to determine whether the container is factory sealed or has been previously opened.

15. The Patents-in-Suit describe a specially designed hinge between the container and the lid that joins the container and lid together while also including a frangible section that is torn off the hinge when a consumer first opens the container.

16. Figure 1 of the '003 Patent, reproduced and annotated below, depicts the frangible section 44b on the hinge 16.



THE [REDACTED] AGREEMENT

17. [REDACTED]

[REDACTED] (See Exhibit 3.) [REDACTED]

[REDACTED]

18. In 2011, Pactiv acquired PWP and therefore assumed PWP's obligations [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

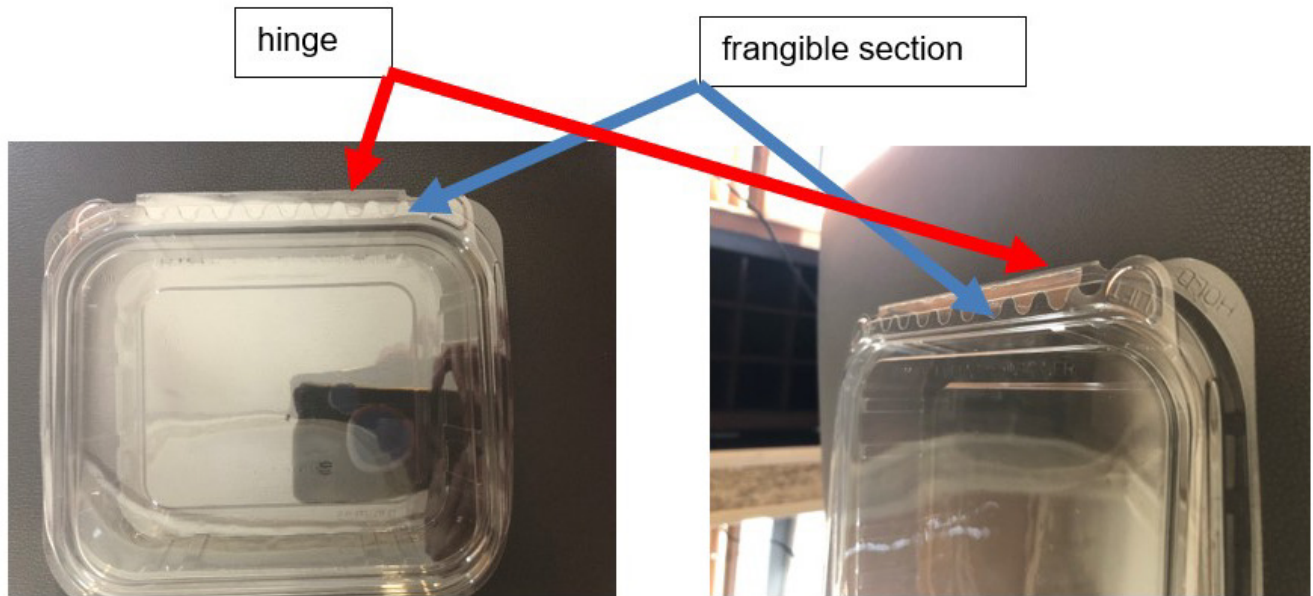
[REDACTED]

PACTIV'S NEW PRODUCTS

23. In 2018, Pactiv launched a new line of tamper evident containers, currently marketed by Pactiv under Pactiv product numbers TEHL5X408, TEHL5X412, TEHL5X316, TEHL7X616S, TEHL7X620, TEHL7X624, THEL7X632, TEHL8X835S, TEHL8X835SDOME, TEHL8X848, TEHL8X864, TEHL8X864DOME and TEHL8X4S (each a “Pactiv Accused Product”). An image of one of Pactiv’s containers embodying the tamper evident feature of Pactiv’s containers is shown below.

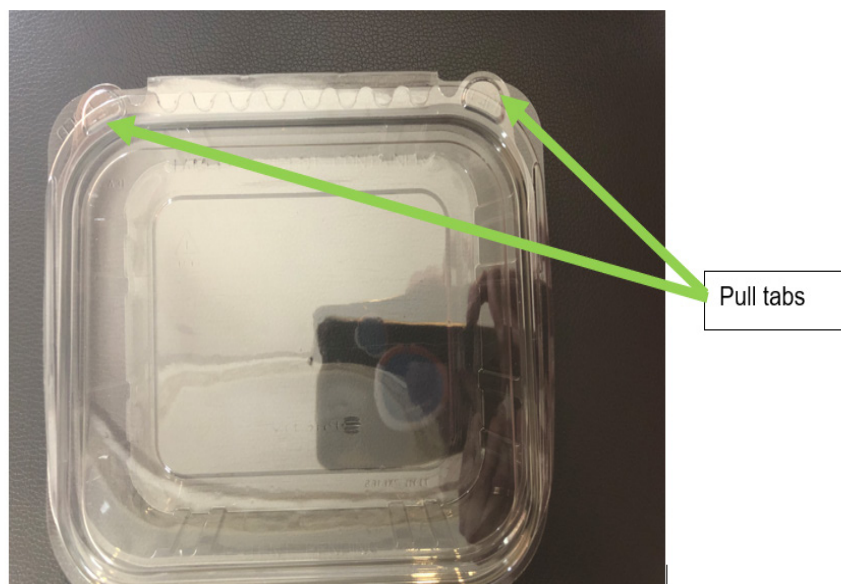


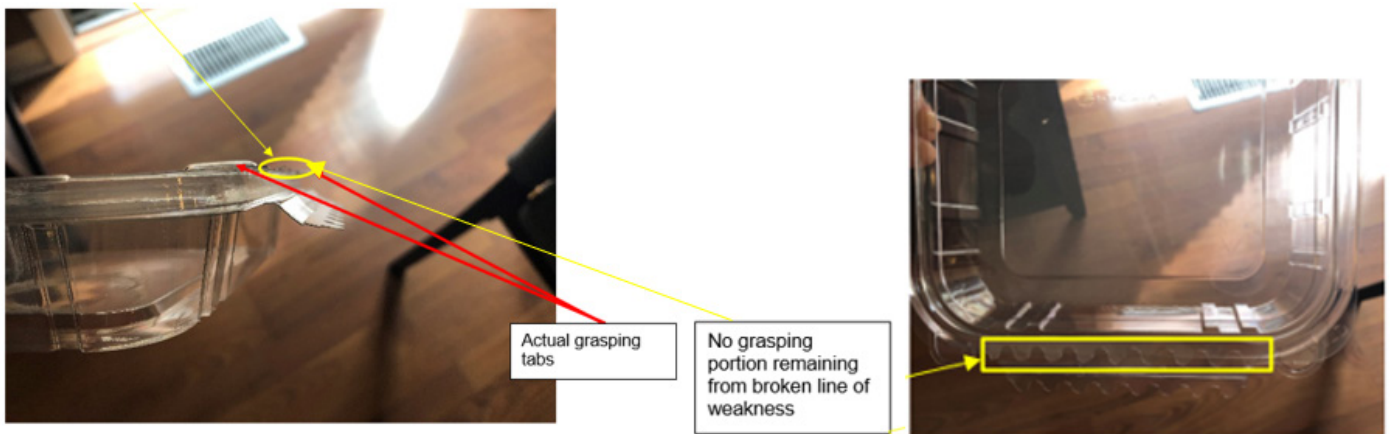
24. In contrast to the alleged invention of the Patents-in-Suit, the Pactiv Accused Products do not have a frangible section at the hinge. Instead, as shown in the annotated images of Pactiv’s Accused Product below, the frangible section is on the lid of the container, not the hinge.



25. In addition to the above, the Pactiv Accused Products do not infringe the '756 patent because the breaking of the frangible section does not “form at least one projection...for facilitating removal of the cover portion.”

26. As seen below, the frangible section does not form an accessible gripping portion. That function is achieved by the tabs on either side of the line of weakness:





27. As seen above, when the line of weakness is severed, the remaining portion does not provide any section which could be used to facilitate removal.

INLINE’S INFRINGEMENT ALLEGATIONS AGAINST PACTIV’S NEW PRODUCT

28. On June 11, 2018, Inline [REDACTED] [REDACTED] by alerting Pactiv by letter from its founder, Tom Orkisz, that it believed one or more of Pactiv’s Accused Products [REDACTED] [REDACTED]

29. Pactiv responded by disagreeing that the Pactiv Accused Products infringe any of [REDACTED] the Patents-in-Suit.

30. [REDACTED] [REDACTED] [REDACTED]

31. [REDACTED] [REDACTED] [REDACTED]

32. [REDACTED]

[REDACTED]

33. [REDACTED]

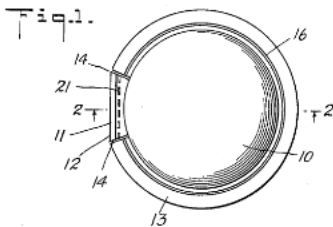
[REDACTED]

[REDACTED]

INVALIDITY OF THE PATENTS-IN-SUIT

34. The claims of the '003 Patent and '756 Patent are invalid under one or more of 35 U.S.C. §§ 102, 103, and 112.

35. For example, and without limiting the bases for invalidity of such claims, at least U.S. Patent No. 2,915,214 to Frankel ("Frankel") discloses a similar hinge/frangible flange structure as the Pactiv Accused Products, i.e., where the frangible section (21) is not at the junction between the flanges (i.e., the hinge (12)), but is instead as part of the lid:



36. If the Patents-in-Suit cover the Accused Products, they are necessarily invalid over Frankel under 35 U.S.C. §§ 102 and/or 103, or the claims are indefinite under 35 U.S.C. § 112.

37. On information and belief, other prior art and combinations thereof rendering the claims of the Patents-in-Suit invalid under 35 U.S.C. §§ 102 and/or 103.

COUNT I – DECLARATION OF NON-INFRINGEMENT OF THE '003 PATENT

38. Pactiv incorporates paragraphs 1 through 37 above as if alleged fully herein.

39. Pactiv's Accused Products do not infringe any valid claim of the '003 Patent.

40. Pactiv, through the sale of the Accused Products, has not induced others to infringe and does not contribute to the infringement, directly or indirectly, of the '003 Patent.

41. Pactiv is entitled to a judgment declaring that it does not infringe, and has not infringed, any valid claims of the '003 Patent.

COUNT II – DECLARATION OF NON-INFRINGEMENT OF THE '756 PATENT

42. Pactiv incorporates paragraphs 1 through 41 above as if alleged fully herein.

43. Pactiv's Accused Products do not infringe any valid claim of the '756 Patent.

44. Pactiv, through the sale of the Accused Products, has not induced others to infringe and does not contribute to the infringement, directly or indirectly, of the '756 Patent.

45. Pactiv is entitled to a judgment declaring that it does not infringe, and has not infringed, any valid claims of the '756 Patent.

COUNT III – DECLARATION OF INVALIDITY OF THE '003 PATENT UNDER ONE OR MORE OF 35 U.S.C. §§ 102, 103, AND 112

46. Pactiv incorporates paragraphs 1 through 45 above as if alleged fully herein.

47. Pactiv is entitled to a declaratory judgment that the claims of the '003 Patent are invalid under one or more of 35 U.S.C. §§ 102, 103, and 112.

COUNT IV – DECLARATION OF INVALIDITY OF THE '756 PATENT UNDER ONE OR MORE OF 35 U.S.C. §§ 102, 103, AND 112

48. Pactiv incorporates paragraphs 1 through 47 above as if alleged fully herein.

49. Pactiv is entitled to a declaratory judgment that the claims of the '756 Patent are invalid under one or more of 35 U.S.C. §§ 102, 103, and 112.

**COUNT V – DECLARATION THAT THE [REDACTED]
AGREEMENT HAS NOT BEEN BREACHED BY PACTIV**

50. Pactiv incorporates paragraphs 1 through 49 above as if alleged fully herein.

51. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

53. Thus, even if a Court ultimately finds that Pactiv’s Accused Products infringes one or both of the Patents-in-Suit, this infringement does not constitute a breach of contract, [REDACTED]

[REDACTED]

[REDACTED]

54. Pactiv has fully complied with all conditions [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

COUNT VI – DECLARATION THAT INLINE IS LIMITED TO THE REMEDIES [REDACTED]

55. Pactiv incorporates paragraphs 1 through 54 above as if alleged fully herein.

56. [REDACTED]

[REDACTED]

- e. a declaration that Pactiv has not breached the [REDACTED] Agreement between Pactiv and Inline;
[REDACTED]
- g. a declaration that Inline is not entitled to any injunctive relief against Pactiv that would enjoin Pactiv from making, using, selling, offering to sell or importing any Pactiv Accused Products;
- h. a declaration that the case is exceptional under 35 U.S.C. § 285;
- i. an award of attorneys' fees, costs and related expenses to Pactiv pursuant to 35 U.S.C. § 285 and other equitable powers of the Court; and
- j. such other relief, in law or equity, as this Court deems just and proper.

Respectfully submitted,

/s/Stephen P. McNamara

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