IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

BOUND2B B.V.,	)	Civil Action
	)	
Plaintiff,	)	No. 1:22-cv-00195
	)	
v.	)	Judge Andrea R. Wood
	)	
XOLUTION, GMBH and XOLUTION, INC.,	)	
	)	***Electronically Filed***
	)	
Defendants.	)	**JURY TRIAL DEMANDED**

FIRST AMENDED COMPLAINT

Plaintiff, Bound2B B.V. ("Plaintiff" or "Bound2B"), through their undersigned counsel, hereby alleges the following for its First Amended Complaint against Defendants, Xolution, GmbH and Xolution, Inc. (collectively, "Defendants"):

PARTIES

1. Bound2B is a Dutch corporation having its principal place of business at Grebbeweg 111, 3911 AV Rhenen, The Netherlands.

2. Upon information and belief, Defendant Xolution GmbH is a German corporation having its principal place of business in Unterhachinger Str. 75, 81737 München, Germany.

3. Upon information and belief, Defendant Xolution, Inc. is a Delaware corporation having its principal place of business in this judicial district.

JURISDICTION AND VENUE

4. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 271 *et seq*.

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

6. This Court has personal jurisdiction over Defendants because Defendants have committed, and continue to commit, acts of infringement in this district, as explained in further detail below. Upon information and belief, Defendant Xolution GmbH created, owns and operates Xolution, Inc. in this judicial district as a sales office for marketing and sales of the infringing products.

7. Venue is proper under 28 U.S.C. § 1391 because Defendant Xolution GmbH is a foreign entity that has committed and continues to commit acts of infringement in this District, and is subject to personal jurisdiction in this District.

8. Venue is proper under 28 U.S.C. Sec. 1400(b) because Defendant Xolution, Inc. has a regular and established place of business in this judicial district and has committed and continues to commit acts of infringement in this judicial district.

FACTS

9. On November 2, 2010, the United States Patent and Trademark Office duly and lawfully issued United States Patent No. 7,823,740 ("the '740 patent").

10. Bound2B is the owner of all right, title, and interest to the '740 patent. A true and correct copy of the '740 patent is attached hereto as Exhibit A, and is incorporated by reference as if fully reinstated herein.

11. Defendants market and sell a product identified as the "XO System."

12. Upon information and belief, the XO System infringes, either directly or indirectly, one or more claims of the '740 patent.

13. Upon information and belief, Defendants had actual knowledge of the '740 patent at least as early as May 19, 2020, when Defendants initiated a nullity proceeding against a

European equivalent of the '740 Patent. Further, Plaintiff sent Defendants a cease and desist letter regarding the XO System and identifying the '740 Patent on March 4, 2021.

14. Upon information and belief, Defendants thus marketed and/or sold the XO System with actual knowledge of the '740 patent, such as on their website www.xolution.com.

15. Upon information and belief, Defendants have and have had actual knowledge that the XO System infringes at least one claim of the '740 patent since at least March 4, 2021.

16. Upon information and belief, the XO System comprises a re-sealable closure for beverage cans, comprising a sealing element, and an operating element which includes a coupling means, such as required by the claims of the '740 patent. Defendants refer to the XO Internal Relock Disc, the XO Pull Tab and the XO Slider on their website, which meet these claim elements.

17. Upon information and belief, Defendants manufacture the XO System and imports it into the United States where it is distributed to beverage and beverage container manufacturers, such as Ball Corporation who caps their beverage containers with the XO System. The XO System is used on both alcoholic and non-alcoholic beverage contains, such as Canteen Wine and PepsiCo's Mountain Dew Amp Game Fuel.

COUNT I
DIRECT INFRINGEMENT OF THE '740 PATENT

18. Plaintiff incorporates by reference herein the averments set forth in paragraphs 1 – 17 hereof as if set forth herein in their entirety.

19. Defendants have and continue to infringe one or more of the claims of the '740 patent, including at least claims 1, 2, 3, 5, 7, 8, 11-14, 17-19, and 21-27 under 35 U.S.C. § 271 by selling and offering to sell the XO System.

20. Defendants are directly infringing, contributorily infringing and/or inducing infringement of the ’740 patent.

21. Claim 1 of the ’740 patent recites:

Device for sealing foodstuff containers, in particular drink containers, comprising:

a sealing element adapted to engage on a cover of a foodstuff container around an opening arranged in the cover, and

an operating element adapted to co-act with the sealing element for displacing the sealing element between an opened position leaving the opening clear and a closed position sealing the opening, the operating element being provided with coupling means for coupling to the foodstuff container,

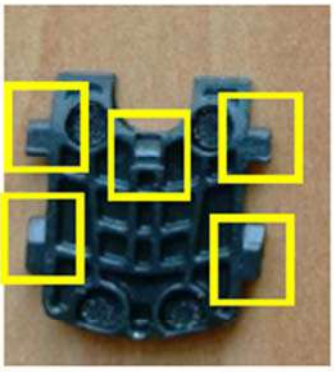
wherein the relative orientation of the sealing element and the operating element can be changed such that the operating element can cause the sealing element in the closed position to engage under bias on the cover for substantially medium-tight sealing of the foodstuff container, characterized in that said coupling means being adapted to engage on a peripheral edge of the opening,

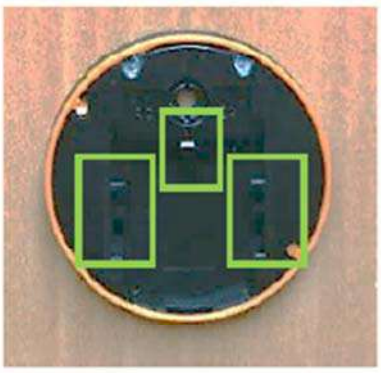
wherein the sealing element is located at least substantially inside of the foodstuff container.

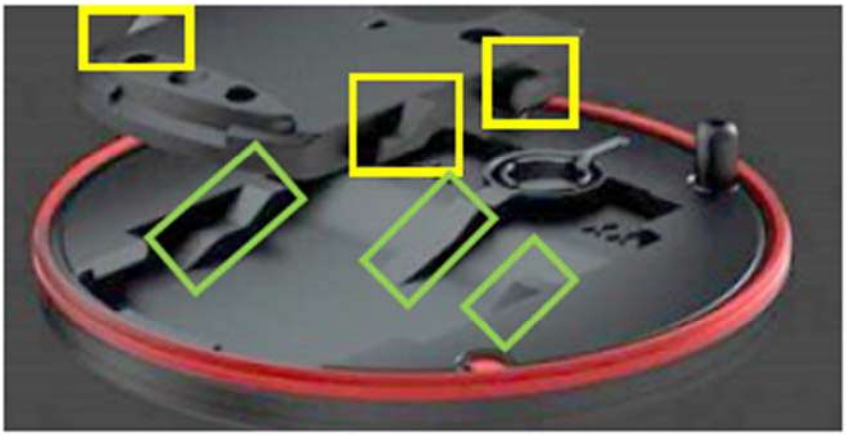
22. The XO System is a re-sealable closure system for foodstuff containers, such as beverage cans, that comprises a sealing element adapted to engage on a cover of a foodstuff container around an opening arranged in the cover. In the below image, at least the ring shown in red seals and engages the cover from the inside.

23. The XO System further comprises an operating element, adapted to co-act with the sealing element top displace the sealing element between an opened position, leaving the opening clear, and a closed position sealing the opening, as shown in the below images.

24. An inner part of the operating element has a central protrusion in the direction of the inside of the can. It also has laterally protruding, beveled parts (bordered in yellow below), which interact with the sloping ramps on the side of the sealing element facing upwards (bordered in green below).



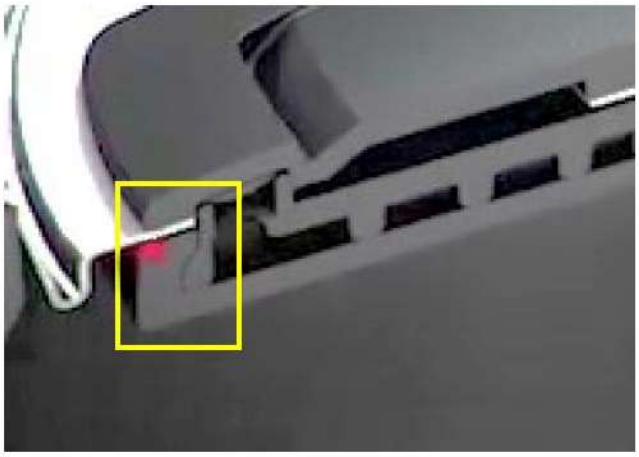




25. Upon information and belief, the relative orientation of the sealing element and the operating element of the XO System can be changed such that the operating element can cause the sealing element in the closed position to engage under bias on the cover, for substantially medium-tight sealing of the foodstuff container. The operating element is pushed into the open position when a user pulls on the XO Pull Tab, first pulling it upwards and then pulling it away from the opening, as illustrated below in a graphic taken from Defendants' website. When the user pushes

the operating element into the open position, the protruding or projecting parts of the operating element press on the sloping ramps of the sealing element. The further the operating element is moved, the more the sealing element is pressed down.

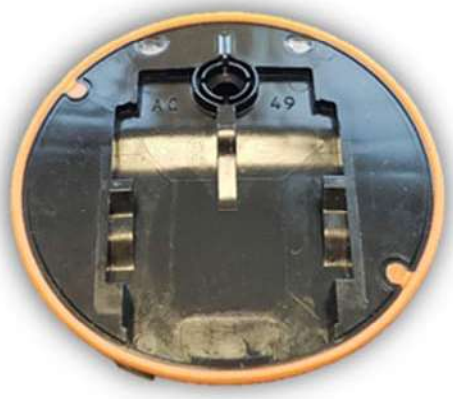
26. The sealing element itself is fixedly connected to the cover of the can in the area opposite the opening, which itself creates a bias of the sealing element in relation to the cover with the opening. If the sealing element is pressed further down by the operating element during the opening process, this bias increases. Further, when the operating element is moved into the closed position, the force acting downwards on the sealing element decreases. Due to the bias created in the sealing element when it is pressed down, it presses upwards again in the direction of the cover. At the end of the closing movement, a part of the operating element also engages on and under the sealing element and fixes it to the inside of the cover, such that the operating element causes the sealing element in the closed position to engage under bias on the cover for substantially medium-tight sealing of the foodstuff container as shown below.



27. The operating element of the XO System is provided with a coupling means for coupling to the foodstuff container. The coupling means is adapted to engage on a peripheral edge of the opening. Engagement of the coupling means in the closed position is illustrated below, where the operating element has been moved in the direction of the opening and the coupling means engages on the peripheral edge of the opening.

28. Below is a cross-sectional view of the operating element, the coupling means, and the sealing element in the open position.

29. The sealing element of the XO System is located at least substantially inside of the foodstuff container, i.e., on the inside of the cover of the can, as shown below.



30. Defendants' product further infringes at least claims 2, 3, 5, 7, 8, 11-14 and 17-18. As the above images demonstrate, the sealing and operating elements of the XO system enclose portions of the cover both in the opened and closed positions. When the user pulls the pull tab of the XO system, the system is vented through the sealing element and, then, the operating element is moved away from the peripheral edge of the opening in the cover changing a distance between the sealing and operating elements. The above images demonstrate that the operating element is situated partially in the opening and engages the cover bilaterally. Further, the sealing element engages with the cover via a red sealing ring around the inner part of the cover. The above images demonstrate that the sealing element of the XO system comprises a cylindrical protruding member extending in the direction of the can cover and operating element, with a receiving space for a pin which extends from the can cover into the direction of the sealing element. The operating element of the XO system includes a pull tab, which the user can lift and pull in order to move the operating element and reveal the opening, and the pull tab is further in the shape of a fin. Further, the above images demonstrate that the sealing element includes a venting member that interacts with a venting member on the operating element to allowing venting of a beverage container or to block venting of the same when the venting elements are moved relative to each other.

31. Defendants' product further infringes claims 19, and 21-24. The XO system as advertised arrives with a breakable horizontal seal which connects the operating element to two pins in the cover. Defendants advertise the ability of their XO system to "lock" in place, in both an opened position and a closed position. When the operating element is moved into the closed position and the pull tab is lowered, the position of the operating element is fixed such that it cannot continue to slide in parallel to the sealing element or the cover. In the above images of the XO system, the pull tab of the operating element further comprises a hook-shaped member

protruding from the pull tab in the direction of the sealing element, and which engages a receiving space in the sealing element so as to fix the operating element in position relative to the sealing element. The sealing element of the XO system comprises an inner portion facing the interior of the container, and this inner side of the sealing element includes reinforcement members in the radial direction of the sealing element. The operating element of the XO system completely encloses an opening of the cover when the device in the closed position, thereby acting as a barrier to outside compounds entering the container.

32. Defendants' product further infringes claims 25-27 of the '740 patent. Defendants' XO system is advertised on their website specifically for its use in drink containers, and particularly emphasizes use of the system in drink cans.

33. Defendants sale and offers for sale of the XO system for use in drink containers and drink cans at least contributorily infringe and induce infringement of at least claims 25-27 because Defendants knew of the '740 Patent and that the XO System is especially adapted to infringe the '740 Patent. Defendants instructed their customers, such as Ball Corporation, to incorporate the XO system into their beverage containers, knowing the same to constitute infringement. Further, the XO System is not a staple article or commodity of commerce having any substantial non-infringing uses.

34. Defendants will continue to infringe the '740 Patent unless enjoined by this Court.

35. Upon information and belief, Defendants had actual knowledge that the XO System infringes one or more of the claims of the '740 Patent.

36. Defendants' activities in infringing the '740 Patent are willful and wanton, constituting willful infringement of such United States Patent under 35 U.S.C. § 285.

37. Plaintiff has been irreparably damaged and will continue to be irreparably damaged by reason of Defendants' infringement of the '740 Patent unless this Court restrains the infringing acts of Defendants.

38. Plaintiff is without an adequate remedy at law.

39. Plaintiff licenses the '740 Patent to entities that manufacture beverage containers, such as Ball Corporation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

A. that Defendants, their officers, employees, agents, and those persons in active participation with it be permanently enjoined from infringing the claims of United States Patent No. 7,823,740;

B. that a decree be entered adjudging that Defendants infringed the claims of United States Patent No. 7,823,740, and that such infringement was willful;

C. that Defendants be ordered to pay damages to Plaintiff pursuant to 35 U.S.C. § 284, comprising interest from the dates of infringement, resulting from Defendants' infringement of the claims of United States Patent No. 7,823,740;

D. that Defendants be ordered to pay to Plaintiff treble damages pursuant to 35 U.S.C. § 284, resulting from Defendants' willful infringement of United States Patent No. 7,823,740;

E. that Plaintiff be awarded its costs of this action and reasonable attorneys' fees pursuant to 35 U.S.C. § 284 and 285; and

F. that Plaintiff be awarded such further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury for all issues triable by a jury.

Respectfully submitted,

HINSHAW & CULBERTSON LLP

Dated: February 22, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of February, 2022, I electronically filed the foregoing **FIRST AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system which sent notification to all counsel of record.

HINSHAW & CULBERTSON LLP

s/ *Darren J. Hunter*
Darren J. Hunter