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CLERK
U.S. DISTRICT COURT

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

DOCKETED
AUG 10 2004

PLASTIC RECOVERY TECHNOLOGIES,
CORP.,

Plaintiff,

v.

CONTAINER COMPONENTS, INC.,

Defendant.

JUDGE MORAN

No. 04C 5249

JURY TRIAL DEMANDED

MAGISTRATE JUDGE ASHMAN

COMPLAINT

Plaintiff, Plastic Recovery Technologies, Corp. ("PRT"), by its attorneys, complains against Defendant Container Corporation, Inc. ("CCI"), as follows:

1. PRT is an Illinois corporation having its principal place of business at 130 South Jefferson Street, Suite 100, Chicago, IL 60661.
2. Container Components, Inc. ("CCI") is, on information and belief, a California corporation having its principal place of business at 8960 Lurline Avenue, Chatsworth, CA 91311.
3. This Court has jurisdiction over this action of the asserted federal claims pursuant to 28 U.S.C. §§ 1331, 1338 and 2201-2202, and of the common law claims pursuant to the doctrine of pendent jurisdiction. Venue is proper in this Court under 28 U.S.C. § 1391(b).
4. This action seeks a declaration that PRT's unique lid for industrial waste containers or dumpsters does not infringe any claim of U.S. Patent Application No. 10/143,295 (published as US 2003/0209557), as publicly alleged by the application assignee, CCI. This

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action further requests damages and injunctive relief arising from CCI's published false statements to PRT's suppliers and customers that the manufacture and sale of PRT's lids infringe the claims of CCI's published patent application.

5. There is a case or controversy between the parties because CCI, the assignee of the patent application, has threatened PRT with suit in connection with the aforementioned patent application and has advised PRT's customers and suppliers that PRT's lids infringe the claims of CCI's published patent application.

6. For example, on May 4, 2004, an attorney representing CCI and Craig V. Taylor, the inventor named in the patent application and a principal of CCI, wrote PRT and two of its lid suppliers a letter which is attached hereto as Exhibit A. In this letter, the attorney representing CCI states: "The purpose of this letter is to give formal notice to Plastic Recovery Technologies, to Western Industries, and to Chilton Products of the above-identified published patent application ... We understand that Western and Chilton are manufacturing, and PRT is selling a lid which is within the scope of the claims of our client's published patent ... the fact that the patent will issue soon with the published claims (now allowed) as well as additional claims, we suggest that you should promptly cease and desist manufacture and sale of infringing lids." The letter does not include any request made to PRT (or anyone else) to enter into any licensing discussions.

7. At or about the time counsel for CCI sent the May 4 letter to PRT, representatives of CCI advised representatives of Rocky Mountain Welding, one of PRT's largest customers, that certain of PRT's lids allegedly infringed the claims of CCI's pending patent application. CCI's statements to Rocky Mountain were false and clearly designed to disparage PRT's lid products and improperly interfere with PRT's business relationship with Rocky Mountain Welding.

8. In response to CCI's May 4 letter, PRT sent a letter dated May 10, a copy of which is attached hereto as Exhibit B. PRT's letter advised counsel for CCI, among other things, that "we believe the statement in your letter to Western Industries that the manufacture and sale of certain PRT lids 'is within the scope of the claims of [Container Corporation's] published patent' is a false statement, based on our present knowledge." PRT's letter also demanded that CCI and its counsel "immediately cease making any additional false statements to either PRT, its suppliers or customers."

9. In response to PRT's May 10 letter, counsel for CCI responded by letter dated May 13, 2004, a copy of which is attached hereto as Exhibit C. In response to PRT's request for additional information relating to the published patent application, CCI stated in this letter: "Further, if your client will agree to promptly stop manufacture, use or sale of the commercial lids under consideration, if they are within the scope of the claims, we will be pleased to provide copies of the additional allowed claims at this time." Again, no request to enter into any license discussions was made and a pre-condition to further discussions was that PRT would have to stop selling its lid products. Further, CCI did not respond to PRT's request that it cease and desist from making false statements to PRT's suppliers and customers that PRT's lids infringed CCI's patent application.

10. In May and June, the parties had further discussions and communications regarding this matter. However, at no time has CCI withdrawn its position that PRT's lids allegedly infringe the CCI published patent application. Nor has CCI ever offered to enter into any license negotiations with PRT; indeed, CCI has never withdrawn the position set forth in its May 13 letter that it would not even provide PRT with any information relating to the published patent application unless PRT ceased selling its lids -- obviously, an unreasonable condition.

Finally, CCI has refused to agree to PRT's request that it cease and desist from making false statements to PRT's customers and suppliers.

COUNT ONE

(Declaratory Judgment of Non-Infringement)

11. PRT reincorporates and realleges the allegations made in paragraphs 1-10, as if those allegations were set forth verbatim herein.

12. PRT and its customers and suppliers are under a reasonable apprehension that they will be sued by CCI on the allowed claims of the published patent application, once those claims issue.

13. PRT respectfully requests a declaration that it does not infringe any claim of the published patent application because the PRT lid does not infringe any of the claims in the published patent application.

14. Given the correspondence referred to herein, there is clearly a case and controversy between the parties about whether or not the PRT lid infringes any of the published claims of the CCI patent application referred to herein.

15. PRT seeks a declaration from this Court that its dumpster lids do not infringe any claim of CCI's published patent application.

COUNT TWO

(Unfair Competition in Violation of the Lanham Act, 15 U.S.C. § 1125(a))

16. PRT reincorporates and realleges the allegations made in paragraphs 11 through 15, as if those allegations were set forth verbatim herein.

17. As alleged above, CCI has made statements to PRT's customers and suppliers specifically stating that PRT's dumpster lids infringe the claims of CCI's published patent

application. These statements were false when made and, on information and belief, made by CCI with knowledge of their falsity. Further, these statements were made by CCI for the purpose of interfering with PRT's existing and potential customer relations so that said customers would purchase container lids sold by CCI and not lids sold by PRT.

18. On information and belief, the purpose and effect of CCI's statements regarding PRT's alleged infringement of CCI's published patent application are to mislead the garbage industry and trade generally and PRT's customers and suppliers specifically that the only company in the United States which could sell lids similar to PRT's lid without infringing CCI's published patent application is CCI and not PRT or anyone else. CCI's statements regarding PRT's lid are false and misleading for this reason as well.

19. CCI's false and misleading statements regarding PRT's lids are likely to deceive a substantial number of the present or potential customers of both PRT and CCI.

20. CCI's false and misleading statements regarding PRT's lids are material in that they are likely to cause the present and potential customers of PRT to purchase CCI's dumpster locks as opposed to PRT's.

21. PRT has been damaged in its business and property as a result of CCI's false and misleading statements regarding PRT's dumpster locks.

COUNT THREE

(Tortious Interference with PRT's Potential Business Relations)

22. PRT reincorporates and realleges the allegations made in paragraphs 16 through 21, as if those allegations were set forth verbatim herein.

23. The foregoing conduct by CCI constitutes an intentional, tortious, and non-privileged interference with PRT's prospective business relations and advantage calculated to

cause damage to PRT in its lawful business and done with the unlawful purpose to cause such damage and loss, without right or justifiable cause on the part of CCI.

24 PRT has been damaged in its business and property and suffered loss as a result of CCI's tortious interference with PRT's prospective business relations and advantage.

COUNT FOUR

(Common Law Unfair Competition)

25. PRT reincorporates and realleges the allegations made in paragraphs 22 through 24 as if those allegations were set forth verbatim herein.

26. The foregoing conduct by CCI constitutes unfair competition, in that CCI has no justification to damage and/or jeopardize PRT's business by fraud, deceit, trickery or unfair methods of any sort.

30. PRT has been damaged in its business and property as a result of CCI's fraud and deceptive trade and business practices.

WHEREFORE, PRT prays that this Honorable Court enter judgment against CCI as follows:

A. That judgment be entered against CCI and in favor of PRT on each and every count asserted in this Complaint;

B. That the Court enjoin CCI from making any further false statements to any person that PRT's lids allegedly infringe any claim of the published CCI patent application;

C. That the Court declare that the claims of the CCI published patent application are not infringed by PRT;

D. That the Court award PRT damages sufficient to compensate it for all losses PRT has incurred as a result of the wrongful conduct committed by CCI;

E. That the Court find this case to be exceptional pursuant to 35 U.S.C. § 285 and 15 U.S.C. § 1117(a), treble PRT's damages, and impose sanctions against CCI for all reasonable attorneys' fees and costs that PRT incurs in this action.

E. That the Court grant such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff PRT demands a trial by jury on all claims which are triable by jury.

Respectfully submitted,

**PLASTIC RECOVERY TECHNOLOGIES
CORP.**

By: 

Peter C. McCabe III
WINSTON & STRAWN LLP
35 W. Wacker Drive
Chicago, IL 60601
312.558.5600 (telephone)
312.558.5700 (facsimile)

*Attorneys for Plaintiff Plastic Recovery
Technologies Corp.*

Exhibit A

FULWIDER • PATTON

INTELLECTUAL PROPERTY LAW

312 - 558 - 5700

(310) 242-2749
arose@fulpat.com

May 4, 2004

- Richard A. Bardin
- Gilbert G. Kovelman
- Vern Schooley
- James W. Paul
- John S. Nagy
- Craig B. Bailey
- Stephen J. Strauss
- Thomas H. Majcher
- Thomas A. Runk
- Michael S. Elkind
- Gary M. Anderson
- Ronald E. Perez
- J. Morley Drucker
- David G. Parkhurst
- John V. Hanley
- John K. Fitzgerald
- Paul Y. Feng
- Gunther O. Hanke
- James Juo
- David J. Pitman
- David S. Sarisky
- Michael S. Doll
- Paul D. O'Brien
- Samuel L. Alberstadt
- Brian P. Kinder
- Richard C. Salfelder
- Douglas R. Peterson
- Karen L. Ruthig
- Michael J. Muffatt
- Vernon R. Yancy
- Alvin B. Lindsay
- Nickie F. Kubasak
- Lew V. Macapagal
- Jennifer L. Webber
- Of Counsel*
- Francis A. Utecht
- Howard N. Sommers
- Ellsworth R. Roston
- Leonard D. Messinger
- Scott R. Hansen
- Joel D. Voelzke
- Alan C. Rose
- Robert W. Fulwider
(1903-1979)
- Warren L. Patton
(1913-1983)
- John M. Lee
(1921-1978)

VIA FEDERAL EXPRESS
 Office of the President
 Plastic Recovery Technologies
 130 S. Jefferson St., Suite 100
 Chicago, IL 60661

Office of the President
 Western Industries, Inc.
 Corporate Headquarters
 1215 North 62nd Street
 Milwaukee, WI 53213

Office of the President
 Chilton Products
 300 E Breed St
 Chilton, WI 53014

Re: Taylor, Craig
 Client/Matter No.: TAYL-68507
 Subject: U.S. Patent Application No. 2003/0209557A1; Published 11/13/03

Dear Sirs:

We represent Container Components, Inc. and Craig V. Taylor, the owner of the above-identified patent application, a copy of which is enclosed.

The purpose of this letter is to give formal notice to Plastic Recovery Technologies to Western Industries and to Chilton Products of the above-identified published patent application.

As you may know, the patent statute, 35 USC 154(d) now gives the patent owner the right to recover a royalty for infringement from the date of publication of the patent application. Further, patent infringement arises from either making, or using, or selling infringing products.

We understand that Western and Chilton are manufacturing, and PRT is selling a lid which is within the scope of the claims of our client's published patent. In view of this new provision of the law, and the fact that the patent will issue soon with the published claims (now allowed) as well as additional claims, we suggest that you should promptly cease and desist manufacture and sale of infringing lids.

FULWIDER PATTON LEE & UTECHT, LLP

LOS ANGELES • LONG BEACH

Howard Hughes Center • 6060 Center Drive, Tenth Floor, Los Angeles, California 90045

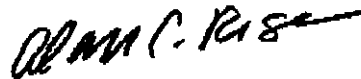
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May 4, 2004
Page 2

However, if for any reason you consider that your lids do not infringe the published claims, we would appreciate your providing us with the basis for this opinion.

Very truly yours,

FULWIDER PATTON LEE & UTECHT, LLP



Alan C. Rose

ACR:jst

Enclosed: U.S. Pat. App. Pub. 2003/0209557A1

cc: Craig Taylor
30939.1

FULWIDER • PATTON
INTELLECTUAL PROPERTY LAW

Exhibit B

WINSTON & STRAWN LLP

43 RUE DU RHONE
1204 GENEVA, SWITZERLAND

CITY POINT
1 ROPEMAKER STREET
LONDON, EC2Y 9HT

333 SOUTH GRAND AVENUE
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101 CALIFORNIA STREET
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1400 L STREET, N.W.
WASHINGTON, D.C. 20005-3502

PETER C. MCCABE III
(312) 558-5954
pmccabe@winston.com

May 10, 2004

VIA FACSIMILE

Alan C. Rose, Esq.
Fulwider Patton Lee & Utecht, LLP
Howard Hughes Center
6060 Center Dr., 10th Floor
Los Angeles, CA 90045

Re: U.S. Patent Application No. 2003/0209557A1; Published 11/13/03

Dear Mr. Rose:

Your letter dated May 4, 2004 to my client, Plastic Recovery Technologies, has been referred to my attention for review and response.

First, it is my understanding that my client's President, Kevin Gavin, has been in communications with your client regarding the above-referenced addendums to the subject patent application. Indeed, I believe my client first raised the matter of Container Corporation's published patent application during a recent general business discussion between the two companies. I also understand that your client is supposed to provide my client with additional information relating to all of the claims which apparently have recently been allowed by the PTO. We look forward to receiving that information so that we can continue and complete our analysis of this matter. Needless to say, we were surprised to receive your letter before your client had provided us with the information we requested.

Second, our initial review of this matter is that there is no infringement by PRT (or any of its suppliers) of any of the published claims arising from the manufacture and sale of PRT's "D Series" container lids. Of course, we understand that there may be some additional allowed claims, and we will complete our analysis after we receive those claims. However, in the meantime, can you please provide us with a claim chart as to how your client believes any lid sold by my client infringes any of the published and/or allowed claims contained in the above-referenced application?

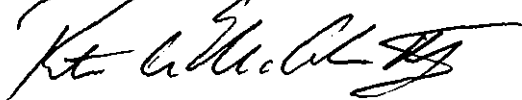
WINSTON & STRAWN LLP

Alan C. Rose, Esq.
May 10, 2004
Page 2

Finally, we request that you immediately cease and desist from communicating with PRT's customers or suppliers about this matter until the parties have had an opportunity to review their respective positions and complete their analysis of this matter. Please be advised that we believe the statement in your letter to Western Industries that the manufacture and sale of certain PRT lids "is within the scope of the claims of [Container Corporation's] published patent" is a false statement, based on our present knowledge. Therefore, we request that you immediately cease making any additional false statements to either PRT, its suppliers or customers.

If you wish to discuss this matter further, again, please direct all future communications to my attention.

Very truly yours,



Peter C. McCabe III

PCM/mb

cc: Kevin Gavin (by facsimile)

Exhibit C

F U L W I D E R • P A T T O N
INTELLECTUAL PROPERTY LAW

Richard A. Bardin
Gilbert G. Kovelman
Vern Schooley
James W. Paul
John S. Nagy
Craig B. Bailey
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May 13, 2004

Ronald E. Perez
I. Morley Drucker
David G. Parkhurst
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John K. Fitzgerald
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David J. Pitman
David S. Sarisky
Michael S. Doll
Paul D. O'Brien

Peter C. McCabe III
WINSTON & STRAWN LLP
35 W. Wacker Drive
Chicago, IL 60601-9703

Re: Taylor, Craig
Client/Matter No.: TAYL-68507
U.S. Patent Published Application No. 2003/0209557A1

Samuel L. Albersstadt
Brian P. Kinder
Richard C. Salfelder
Douglas R. Peterson
Karen L. Ruthig
Michael J. Moffatt
Vernon R. Yancy
Alvin B. Lindsay
Nickie F. Kubasak
Lew V. Macapagal
Jennifer L. Webber

Dear Mr. McCabe:

We acknowledge receipt of your letter of May 10, 2004.

Concerning the additional allowed claims, we will be pleased to send you a copy of the patent as soon as it is issued.

Further, if your client will agree to promptly stop manufacture, use or sale of the commercial lids under consideration, if they are within the scope of the claims, we will be pleased to provide copies of the additional allowed claims at this time.

Incidentally, in your letter you state in your opinion that there is no infringement relative to the "D Series" container lids. In this regard, the PRT lid to which we are referring has no identification, model number or letter, or any manufacturer's identification, other than a molding date. However, the PRT blow molded lid under consideration is a virtual copy of the lid shown and described in the published patent application previously sent to you. Is this the "D Series" PRT container lid?

Of Counsel
Francis A. Utecht
Howard N. Sommers
Ellsworth R. Roston
Leonard D. Messinger
Scott R. Hansen
Joel D. Voelzke
Alan C. Rose

Robert W. Fulwider
(1903-1979)
Warren L. Patton
(1912-1985)
John M. Lee
(1921-1978)

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May 11, 2004
Page 2

We also note that, in our letter to your client we requested that we be informed as to the reason for the alleged non-infringement. We would appreciate your input relative to this request.

Very truly yours,

FULWIDER PATTON LEE & UTECHT, LLP



Alan C. Rose

ACR:jst

FULWIDER • PATTON
INTELLECTUAL PROPERTY LAW

Civil Cover Sheet

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

FILED
AUG 10 2004 JUDGE MORAN
MAGISTRATE JUDGE ASHMAN

Civil Cover Sheet **04C 5249**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Northern District of Illinois.

Plaintiff(s): Plastic Recovery Technologies, Corp.

Defendant(s): Container Components, Inc.

County of Residence: Cook

County of Residence: Los Angeles County, California

Plaintiff's Atty: Peter C. McCabe III
Winston & Strawn
35 West Wacker Drive,
Chicago, IL 60601
312.558.5954

Defendant's Atty:

Unknown

U.S. DISTRICT COURT
CLERK
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II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:- N/A
Defendant:- N/A

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **830 Patent**

VI. Cause of Action: **Declaratory judgment of non-infringement sought under 28 U.S.C. Sec. 2201-02, and false advertising in violation of 15 U.S.C. Sec. 1125 (a)**

VII. Requested in Complaint

Class Action: No
Dollar Demand:
Jury Demand: Yes

VIII. This case IS NOT a refiling of a previously dismissed case.

Signature: Peter C. McCabe III

Date: August 9, 2004

1-2

JUDGE MORAN

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

In the Matter of
 PLASTIC RECOVERY TECHNOLOGIES, CORP.,
 v.
 CONTAINER COMPONENTS, INC.,

Case Number: **04C 5249**

DOCKETED
 AUG 10 2004

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:
 PLASTIC RECOVERY TECHNOLOGIES, CORP. (PLAINTIFF)

(A)		(B)	
SIGNATURE <i>Peter C. McCabe III</i>		SIGNATURE	
NAME Peter C. McCabe III		NAME	
FIRM Winston & Strawn LLP		FIRM	
STREET ADDRESS 35 West Wacker Drive		STREET ADDRESS	
CITY/STATE/ZIP Chicago, IL 60601		CITY/STATE/ZIP	
TELEPHONE NUMBER 312-558-5954	FAX NUMBER 312-558-5700	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS pmccabe@winston.com		E-MAIL ADDRESS	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6190379		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	
		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	
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SIGNATURE		SIGNATURE	
NAME		NAME	
FIRM		FIRM	
STREET ADDRESS		STREET ADDRESS	
CITY/STATE/ZIP		CITY/STATE/ZIP	
TELEPHONE NUMBER	FAX NUMBER	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS		E-MAIL ADDRESS	
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TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	

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