



William R. Robinson (WR 7504)  
Joseph J. Fleischman (JF 1995)  
Davy E. Zoneraich (DZ 0121)  
NORRIS, McLAUGHLIN & MARCUS, P.A.  
P.O. Box 1018  
Somerville, New Jersey 08876-1018  
Telephone No. (908) 722-0700  
Facsimile No. (908) 722-0755

FILED  
1-31-03  
RECEIVED-CLERK  
U.S. DISTRICT COURT  
JAN 31 P 12 12  
WILLIAM T. WALSH  
CLERK  
AT 8:30

**UNITED STATES DISTRICT COURT  
IN THE DISTRICT OF NEW JERSEY**

NEXUS PLASTICS, INC. )  
)  
Plaintiff, )  
)  
v. )  
)  
SCHOLLE CORPORATION and )  
SCHOLLE CUSTOM PACKAGING, )  
INC. )  
)  
Defendant. )

Civil Action No. 03-446 (WHW)

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Nexus Plastics, Inc., for its complaint against defendants Scholle Corporation and Scholle Custom Packaging, Inc. (collectively "Scholle"), alleges as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff Nexus Plastics, Inc. ("Nexus") is a corporation duly organized and existing under the law of the State of California, with a principal place of business at 1 Loretto Avenue, Hawthorne, New Jersey 07506.

2. Upon information and belief, defendant Scholle Corporation ("Scholle Corp.") is a corporation duly organized and existing under the law of the State of Nevada, has a principal

place of business at 360 W. Butterfield Road, Elmhurst, Illinois 60126, and is registered as a foreign profit corporation with the State of New Jersey.

3. Upon information and belief, Scholle Corp. conducts and engages in business and business related activities in, and having effects within, the State of New Jersey and this judicial district.

4. Upon information and belief, defendant Scholle Custom Packaging, Inc. ("Scholle Custom"), a corporation duly organized and existing under the law of the State of Delaware and having a place of business at 201 W. Glocheski Drive, Manistee, Michigan 49660, conducts and engages in business and business related activities in, and having effects within, the State of New Jersey and this judicial district. Upon information and belief, Scholle Custom is a wholly-owned subsidiary of Scholle Corp.

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a). This civil action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and under the patent laws of the United States, 35 U.S.C. Part 1.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b). Upon information and belief, Scholle resides in this judicial district.

**FIRST CAUSE OF ACTION**  
**Declaratory Judgment of Non-Infringement and Invalidity**  
**of U.S Patent No. 4,596,040**

7. This first cause of action is an action for a declaratory judgment of non-infringement and invalidity brought under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and under the patent laws of the United States, 35 U.S.C. Part 1, seeking a declaration that

U.S. Patent No. 4,596,040 ("040 patent") is invalid and that the manufacture, use, or sale of bag products by Nexus does not infringe the '040 patent;

8. On June 17, 1986, the '040 patent, entitled "Large Bulk Bag", was granted to Arthur E. LaFleur, Arnie LaFleur, and Lec LaFleur. The '040 patent matured from application Serial No. 06/528,604, filed on September 1, 1983, which is continuation-in-part application of Serial No. 06/430,809, filed September 30, 1982. A true copy of the '040 patent is attached to this Complaint as Exhibit 1.

9. Upon information and belief, Scholle Custom is the owner of all right and title to the '040 patent by virtue of assignments recorded in the records of the United States Patent and Trademark Office ("USPTO") at Reel 4055, Frame 329 and Reel 12025, Frame 580.

10. Upon information and belief, Scholle markets, advertises, distributes, offers to sell, and sells, or provides for the marketing, advertising, distribution, offering for sale, and sale of, Scholle bag products, including, but not limited to, the bag products covered under the '040 patent, throughout the United States.

11. Upon information and belief, Scholle markets, advertises, distributes, offers to sell, and sells, or provides for the marketing, advertising, distribution, offering for sale, and sale of, Scholle bag products covered under the '040 patent in the State of New Jersey, and in this judicial district.

12. In a letter to Nexus dated January 3, 2003, Scholle alleged that Nexus has manufactured, offered for sale, and sold, and continues to manufacture, offer for sale, and sell, bag products that infringe the '040 patent. In the letter, Scholle demanded that Nexus cease and

desist Nexus's allegedly infringing activities and Scholle stated that Scholle is confident that a court would enjoin Nexus's allegedly infringing activities and award damages to Scholle.

13. Scholle continues to allege that Nexus's manufacture, offer for sale, and sale of Nexus's bag products infringe the '040 patent.

14. There exists an actual controversy between Nexus and Scholle with respect to the non-infringement and invalidity of the '040 patent.

15. Nexus does not infringe any valid claim of the '040 patent.

16. The '040 patent is invalid for failure to comply with one or more of the provisions of 35 U.S.C. §§ 102, 103, and 112.

17. The '040 patent is invalid under 35 U.S.C. § § 102(a), 102(b), and 103 as being unpatentable over U.S. Patent No. 3,119,548 alone, or in combination with at least one of the references of record in the '040 patent.

18. Upon information and belief, more than one year prior to the filing date of the application for the '040 patent, the invention claimed in the '040 patent had been described in a printed publication. Accordingly, the '040 patent is invalid pursuant to 35 U.S.C. § 102(b).

19. Upon information and belief, before the date of the invention claimed in the '040 patent, the invention claimed in the '040 patent had been made in the United States by a person or persons other than the inventors named in the '040 patent who had not abandoned, suppressed, or concealed it. Accordingly, the '040 patent is invalid pursuant to 35 U.S.C. § 102(g).

20. The '040 patent is invalid for one or more of the reasons set forth in 35 U.S.C. Part 1 and the Rules and Regulations of the U.S. Patent and Trademark Office set forth in Title 37, C.F.R. Chapter I.

**SECOND CAUSE OF ACTION**  
**Declaratory Judgment of Non-infringement**  
**of U.S Patent No. 4,781,472**

21. Nexus repeats and reasserts herein the allegations set forth in Paragraphs 1-20 of this Complaint.

22. This second cause of action is an action for a declaratory judgment of non-infringement brought under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and under the patent laws of the United States, 35 U.S.C. Part 1, seeking a declaration that Nexus's manufacture, use, or sale of Nexus bag products does not infringe U.S. Patent No. 4,781,472 ("472 patent").

23. On November 1, 1988, the '472 patent, entitled "Large Bag with Liner", was granted to Arnie LaFleur and Lee LaFleur. The '472 patent matured from application Serial No. 07/118,304, filed November 6, 1987. A true copy of the '472 patent is attached to this Complaint as Exhibit 2.

24. Upon information and belief, Scholle Custom is the owner of all right and title to the '472 patent by virtue of assignments recorded in the records of the USPTO at Reel 4795, Frame 738 and Reel 12025, Frame 580.

25. Upon information and belief, Scholle markets, advertises, distributes, offers to sell, and sells, or provides for the marketing, advertising, distribution, offering for sale, and sale

of, Scholle bag products, including, but not limited to, the bag products covered under the '472 patent, throughout the United States.

26. Upon information and belief, Scholle markets, advertises, distributes, offers to sell, and sells, or provides for the marketing, advertising, distribution, offering for sale, and sale of, Scholle bag products covered under the '472 patent in the State of New Jersey, and in this judicial district.

27. In the letter to Nexus dated January 3, 2003, Scholle alleged that Nexus has manufactured, offered for sale, and sold, and continues to manufacture, offer for sale, and sell, bag products that infringe the '472 patent. In the letter, Scholle demanded that Nexus cease and desist Nexus's allegedly infringing activities and stated that Scholle is confident that a court would enjoin Nexus's allegedly infringing activities and award damages to Scholle.

28. There exists an actual controversy between Nexus and Scholle with respect to the non-infringement of the '472 patent.

29. Nexus does not infringe any valid claim of the '472 patent.

WHEREFORE, Nexus demands judgment against Scholle as follows:

- A. A declaration that each of the '040 and '472 patents is not infringed by Nexus bag products;
- B. A declaration that the '040 patent is invalid;
- C. An award of costs, interest, and expenses including reasonable attorney fees; and
- D. A grant of such other relief as is just and proper.

JURY DEMAND

Nexus hereby demands a trial by jury on all issues raised in this Complaint that are triable  
by jury.

Respectfully submitted,

Dated: January 30, 2003



A handwritten signature in cursive script, reading "Davy Zoneraich", is written over a horizontal line.

Attorneys for Plaintiff  
NEXUS PLASTICS, INC.  
William R. Robinson (WR 7504)  
Joseph J. Fleischman (JF 1995)  
Davy E. Zoneraich (DZ 0121)  
NORRIS, McLAUGHLIN & MARCUS, P.A.  
P.O. Box 1018  
Somerville, New Jersey 08876-1018  
Telephone No. (908) 722-0700  
Facsimile No. (908) 722-0755