

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ATMI PACKAGING, INC.

Plaintiff,

v.

MILLIPORE CORPORATION

Defendant.

Civil Action No.: 1:10-cv-11247-RGS

JURY TRIAL DEMANDED

THIRD AMENDED COMPLAINT

Plaintiff ATMI Packaging, Inc. brings this action against Defendant Millipore Corporation for patent infringement. By this Complaint, Plaintiff seeks, *inter alia*, monetary damages and injunctive relief and allege as follows:

PARTIES

1. Plaintiff ATMI Packaging, Inc. (hereafter “Plaintiff” or “ATMI”) is a Minnesota corporation with a principal place of business at 10851 South Louisiana Avenue, South Bloomington, Minnesota.

2. Upon information and belief, defendant Millipore Corporation (hereafter “Millipore” or “Millipore Corporation”) is a Massachusetts corporation with a principal place of business at 290 Concord Road, Billerica, Massachusetts.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action for patent infringement pursuant to the provisions of 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Millipore because it is a Massachusetts corporation with a principal place of business in Massachusetts and, upon information and belief, makes, uses, sells and/or offers to sell infringing products in Massachusetts.

5. Venue is proper under 28 U.S.C. § 1391(b) (c) and (d) and 28 U.S.C. § 1400(b).

ATMI'S BUSINESS, PRODUCTS AND PATENTS

6. ATMI is a global leader in providing process materials and process technology for the life science industries.

7. ATMI is a technology leader in the field of single-use mixing systems, single-use bioprocess systems, and consumables for the pharmaceutical and biopharmaceutical industries. ATMI's innovative, single-use mixers and bioreactors drive bioprocess efficiency and deliver value for biopharmaceutical companies in the United States and around the world.

8. ATMI is the owner of a portfolio of United States and foreign patents relating to single-use mixing and bioprocess systems, including U.S. Patent No. 7,695,186; U.S. Patent No. 7,481,572; U.S. Patent No. 7,086,778; U.S. Patent No. 7,434,983; U.S. Patent No. 7,267,479; U.S. Patent No. 7,384,027; and U.S. Patent No. 7,357,567 (hereafter "the Asserted Patents").

9. ATMI manufactures and sells single-use mixing and bioprocess systems covered by one or more claims of the Asserted Patents in the United States and elsewhere in the world.

MILLIPORE'S SINGLE-USE MIXING SYSTEMS

10. Upon information and belief, the Mobius Single-use Mixing System (hereafter "Mobius") is a single-use mixing system that defendant Millipore Corporation manufactures, uses, sells and/or offers for sale in Massachusetts and elsewhere in the United States.

11. Upon information and belief, the Mobius CellReady Bioreactor systems (hereinafter "Mobius Single-use Bioreactor Mixing Systems") are single-use bioreactor mixing

systems that Defendant Millipore Corporation has designed and made, and has used, sold or offered for sale, or intends to use, sell or offer for sale, in Massachusetts and elsewhere the United States. The Mobius Single-use Bioreactor Mixing Systems include a single-use bioreactor bag capable of providing contemporaneous sparging and agitation to a fluid. An example of such a single-use bioreactor bag of the Mobius Single-use Bioreactor Mixing Systems was produced by Millipore for inspection by ATMI on February 10, 2011.

**COUNT I
(INFRINGEMENT OF U.S. PATENT NO. 7,695,186)**

12. ATMI re-states and incorporates paragraphs 1-11 of this Amended Complaint as if fully set forth herein.

13. ATMI is the owner of and has full right, title, and interest, including all substantial patent rights, in and to U.S. Patent No. 7,695,186 (the “‘186” patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

14. In violation of one or more sections of 35 U.S.C. § 271, Defendant Millipore Corporation has infringed, and continues to infringe the ‘186 patent by making, using, selling, and/or offering to sell the Mobius Single-use Mixing System and the Mobius Single-use Bioreactor Mixing Systems in Massachusetts and elsewhere in the United States.

15. ATMI has complied with the statutory requirement of placing a notice of the ‘186 patent on all applicable single-use mixing and/or single-use bioprocess systems it manufactures and sells.

16. Upon information and belief, Millipore has had notice and knowledge of the ‘186 patent since at least as early as July 26, 2010, including the claims therein, well before the filing of this amended complaint, and has deliberately and willfully continued to make, use, sell, and/or

offer to sell infringing single-use mixing and single-use bioprocess systems despite this knowledge, and despite knowledge of its infringement of the '186 patent.

17. Millipore's infringement of the '186 patent is causing ATMI reparable and irreparable harm.

18. Millipore's infringement will continue to injure ATMI and cause ATMI to suffer financial damage in an amount to be proven at trial.

**COUNT II
(INFRINGEMENT OF U.S. PATENT NO. 7,481,572)**

19. ATMI re-states and incorporates paragraphs 1-18 of this Amended Complaint as if fully set forth herein.

20. ATMI is the owner of and has full right, title, and interest, including all substantial patent rights, in and to U.S. Patent No. 7,481,572 (the "'572" patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

21. In violation of one or more sections of 35 U.S.C. § 271, Millipore has infringed, and continues to infringe the '572 patent by making, using, selling, and/or offering to sell its Mobius Single-use Mixing System and its Mobius Single-use Bioreactor Mixing Systems in Massachusetts and elsewhere in the United States.

22. ATMI has complied with the statutory requirement of placing a notice of the '572 patent on all applicable single-use mixing and/or single-use bioprocess systems it manufactures and sells.

23. Upon information and belief, Millipore has had notice and knowledge of the '572 patent since at least as early as July 26, 2010, including the claims therein, well before the filing of this amended complaint, and has deliberately and willfully continued to make, use, sell, and/or

offer to sell infringing single-use mixing and single-use bioprocess systems despite this knowledge, and despite knowledge of its infringement of the ‘572 patent.

24. Millipore’s infringement of the ‘572 patent is causing ATMI reparable and irreparable harm.

25. Millipore’s infringement will continue to injure ATMI and cause ATMI to suffer financial damage in an amount to be proven at trial.

**COUNT III
(INFRINGEMENT OF U.S. PATENT NO. 7,086,778)**

26. ATMI re-states and incorporates paragraphs 1-25 of this Amended Complaint as if fully set forth herein.

27. ATMI is the owner of and has full right, title, and interest, including all substantial patent rights, in and to U.S. Patent No. 7,086,778 (the “‘778” patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

28. In violation of one or more sections of 35 U.S.C. § 271, Millipore has infringed, and continues to infringe the ‘778 patent by making, using, selling, and/or offering to sell its Mobius Single-use Mixing System and its Mobius Single-use Bioreactor Mixing Systems in Massachusetts and elsewhere in the United States.

29. ATMI has complied with the statutory requirement of placing a notice of the ‘778 patent on all applicable single-use mixing and/or single-use bioprocess systems it manufactures and sells.

30. Upon information and belief, Millipore has had notice and knowledge of the ‘778 patent since at least as early as July 26, 2010, including the claims therein, well before the filing of this amended complaint, and has deliberately and willfully continued to make, use, sell, and/or

offer to sell infringing single-use mixing and single-use bioprocess systems despite this knowledge, and despite knowledge of its infringement of the '778 patent.

31. Millipore's infringement of the '778 patent is causing ATMI reparable and irreparable harm.

32. Millipore's infringement will continue to injure ATMI and cause ATMI to suffer financial damage in an amount to be proven at trial.

**COUNT IV
(INFRINGEMENT OF U.S. PATENT NO. 7,434,983)**

33. ATMI re-states and incorporates paragraphs 1-32 of this Amended Complaint as if fully set forth herein.

34. ATMI is the owner of and has full right, title, and interest, including all substantial patent rights, in and to U.S. Patent No. 7,434,983 (the "'983" patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

35. In violation of one or more sections of 35 U.S.C. § 271, Millipore has infringed, and continues to infringe the '983 patent by making, using, selling, and/or offering to sell its Mobius Single-use Bioreactor Mixing Systems in Massachusetts and elsewhere in the United States.

36. ATMI has complied with the statutory requirement of placing a notice of the '983 patent on all applicable single-use mixing and/or single-use bioprocess systems it manufactures and sells.

37. Upon information and belief, Millipore has had notice and knowledge of the '983 patent since at least as early as July 26, 2010, including the claims therein, well before the filing of this amended complaint, and has deliberately and willfully continued to make, use, sell, and/or

offer to sell infringing single-use bioprocess systems despite this knowledge, and despite knowledge of its infringement of the '983 patent.

38. Millipore's infringement of the '983 patent is causing ATMI reparable and irreparable harm.

39. Millipore's infringement will continue to injure ATMI and cause ATMI to suffer financial damage in an amount to be proven at trial.

**COUNT V
(INFRINGEMENT OF U.S. PATENT NO. 7,267,479)**

40. ATMI re-states and incorporates paragraphs 1-39 of this Amended Complaint as if fully set forth herein.

41. ATMI is the owner of and has full right, title, and interest, including all substantial patent rights, in and to U.S. Patent No. 7,267,479 (the "'479" patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

42. In violation of one or more sections of 35 U.S.C. § 271, Millipore has infringed, and continues to infringe the '479 patent by making, using, selling, and/or offering to sell its Mobius Single-use Mixing System in Massachusetts and elsewhere in the United States.

43. ATMI has complied with the statutory requirement of placing a notice of the '479 patent on all applicable single-use mixing and/or single-use bioprocess systems it manufactures and sells.

44. Upon information and belief, Millipore has had notice and knowledge of the '479 patent since at least as early as July 26, 2010, including the claims therein, well before the filing of this amended complaint, and has deliberately and willfully continued to make, use, sell, and/or offer to sell infringing single-use mixing systems despite this knowledge, and despite knowledge of its infringement of the '479 patent.

45. Millipore's infringement of the '479 patent is causing ATMI reparable and irreparable harm.

46. Millipore's infringement will continue to injure ATMI and cause ATMI to suffer financial damage in an amount to be proven at trial.

**COUNT VI
(INFRINGEMENT OF U.S. PATENT NO. 7,384,027)**

47. ATMI re-states and incorporates paragraphs 1-46 of this Amended Complaint as if fully set forth herein.

48. ATMI is the owner of and has full right, title, and interest, including all substantial patent rights, in and to U.S. Patent No. 7,384,027 (the "'027" patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

49. In violation of one or more sections of 35 U.S.C. § 271, Millipore has infringed, and continues to infringe the '027 patent by making, using, selling, and/or offering to sell its Mobius Single-use Bioreactor Mixing Systems in Massachusetts and elsewhere in the United States.

50. ATMI has complied with the statutory requirement of placing a notice of the '027 patent on all applicable single-use bioprocess systems it manufactures and sells.

51. Upon information and belief, Millipore has had notice and knowledge of the '027 patent since at least as early as July 26, 2010, including the claims therein, well before the filing of this amended complaint, and has deliberately and willfully continued to make, use, sell, and/or offer to sell infringing single-use bioprocess systems despite this knowledge, and despite knowledge of its infringement of the '027 patent.

52. Millipore's infringement of the '027 patent is causing ATMI reparable and irreparable harm.

53. Millipore's infringement will continue to injure ATMI and cause ATMI to suffer financial damage in an amount to be proven at trial.

**COUNT VII
(INFRINGEMENT OF U.S. PATENT NO. 7,357,567)**

54. ATMI re-states and incorporates paragraphs 1-53 of this Amended Complaint as if fully set forth herein.

55. ATMI is the owner of and has full right, title, and interest, including all substantial patent rights, in and to U.S. Patent No. 7,357,567 (the "'567" patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

56. In violation of one or more sections of 35 U.S.C. § 271, Millipore has infringed, and continues to infringe the '567 patent by making, using, selling, and/or offering to sell its Mobius Single-use Bioreactor Mixing Systems in Massachusetts and elsewhere in the United States.

57. ATMI has complied with the statutory requirement of placing a notice of the '567 patent on all applicable single-use mixing and/or single-use bioprocess systems it manufactures and sells.

58. Upon information and belief, Millipore has had notice and knowledge of the '567 patent, since at least as early as March 10, 2011, including the claims therein, which is before the filing of this amended complaint, and has deliberately and willfully continued to make, use, sell, and/or offer to sell infringing single-use bioprocess systems despite this knowledge, and despite knowledge of its infringement of the '567 patent.

59. Millipore's infringement of the '567 patent is causing ATMI repairable and irreparable harm.

60. Millipore's infringement will continue to injure ATMI and cause ATMI to suffer financial damage in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, ATMI respectfully requests this Court to grant the following relief, and any other relief the Court may deem proper:

A. Enter judgment that Millipore infringes U.S. Patent No. 7,695,186; U.S. Patent No. 7,481,572; U.S. Patent No. 7,086,778; U.S. Patent No. 7,434,983; U.S. Patent No. 7,267,479; U.S. Patent No. 7,384,027 and U.S. Patent No. 7,357,567 in violation of 35 U.S.C. §271 *et seq.*

B. Temporarily, preliminarily and permanently enjoin Millipore, its officers, agents, employees and representatives, and all those controlled by or acting in concert or privity with them, from infringing U.S. Patent No. 7,695,186; U.S. Patent No. 7,481,572; U.S. Patent No. 7,086,778; U.S. Patent No. 7,434,983; U.S. Patent No. 7,267,479; U.S. Patent No. 7,384,027 and U.S. Patent No. 7,357,567.

C. Award ATMI monetary damages for Millipore's infringement of U.S. Patent No. 7,695,186; U.S. Patent No. 7,481,572; U.S. Patent No. 7,086,778; U.S. Patent No. 7,434,983; U.S. Patent No. 7,267,479; U.S. Patent No. 7,384,027 and U.S. Patent No. 7,357,567.

D. Award ATMI treble damages and its attorneys' fees for Millipore's willful infringement of U.S. Patent No. 7,695,186; U.S. Patent No. 7,481,572; U.S. Patent No. 7,086,778; U.S. Patent No. 7,434,983; U.S. Patent No. 7,267,479; U.S. Patent No. 7,384,027 and U.S. Patent No. 7,357,567.

E. Award ATMI all other relief deemed just and proper by the Court.

JURY DEMAND

ATMI demands trial by jury for all issues so triable.

ATMI PACKAGING, INC.

Date: May 16, 2011

By: /s/ Paul J. Cronin
Paul J. Hayes (BBO# 227,000)
pjhayes@hbcllc.com
Paul J. Cronin (BBO# 641,230)
pjcronin@hbcllc.com
Hayes Bostock & Cronin LLC
300 Brickstone Square, 9th Floor
Andover, MA 01810
978.809.3850 (telephone)
978.809.3869 (facsimile)

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants by email and first class mail on May 16, 2011.

/s/ Paul J. Cronin
Paul J. Cronin

5335892v.1