

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

MEADWESTVACO CORPORATION, <i>et</i>	)	
<i>al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	C.A. NO. 1:10 CV 511
v.	)	
	)	
REXAM PLC, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**SECOND AMENDED COMPLAINT**

1. Plaintiffs MeadWestvaco Corporation ( “MWV”) and MeadWestvaco Calmar, Inc. (“MWV Calmar”) (collectively “Plaintiffs”), by and through their attorneys, hereby demand a jury trial and complain of Rexam Dispensing Systems SAS (“Rexam Dispensing”), Rexam Beauty and Closures Inc. (“Rexam Beauty”), Valois, S.A.S. (“Valois”), and Valois of America, Inc. (“Valois of America”) ( collectively “Defendants”) as set forth below.

**NATURE OF THE ACTION**

2. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271, *et seq.* to enjoin and obtain damages resulting from Defendants’ infringement of United States Patent Nos. 7,718,132 (“the ‘132 Patent”) and 7,722,819 (“the ‘819 Patent”), both entitled “Fragrance Product, Dispenser, and Dispenser Assembly.”

3. This action for patent infringement involves Defendants’ manufacture, use, sale, offer for sale in, and/or importation into the United States of infringing fragrance

products with invisible dip-tubes, dispenser assemblies with invisible dip-tubes, and components thereof, and Defendants' inducement of others to infringe the '132 Patent and the '819 Patent.

#### **THE PARTIES**

4. Plaintiff MWV is incorporated under the laws of the state of Delaware and has its principal place of business located at 501 South 5<sup>th</sup> Street, Richmond, Virginia 23219.

5. Plaintiff MWV Calmar is a wholly owned subsidiary of Plaintiff MWV and is incorporated under the laws of the state of Delaware and has its principal place of business located at 11901 Grandview Road, Grandview, Missouri 64030.

6. Rexam Dispensing is a French company having a place of business at 15 bis Route Nationale, 76470 Le Tréport, France.

7. Upon information and belief, Rexam Beauty is a Delaware corporation having a place of business at 4201 Congress Street, Suite 340, Charlotte, North Carolina, 28209.

8. Upon information and belief, Valois is a French company having a place of business at BPG - Route du Prieuré, 27110 Le Neubourg - France.

9. Upon information and belief, Valois of America is a Connecticut corporation having a place of business at 250 North Route 303, Congers, New York 10920-1408.

#### **JURISDICTION AND VENUE**

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

11. Rexam Dispensing is subject to personal jurisdiction in the State of Virginia because Rexam Dispensing has committed acts causing direct infringement, contributory

infringement, and/or inducement of infringement, of one or more of the claims of the ‘132 Patent and the ‘819 Patent in this judicial district and division.

11(a). Rexam Dispensing makes, sells and offers to sell fragrance dispenser pump products or dip tubes for use in pump products worldwide, including the products accused of infringement in this case.

11(b). Upon information and belief, in engaging in the conduct described in paragraph 11(a), Rexam Dispensing purposefully directs its activities at the Eastern District of Virginia and delivers its products, including the products accused of infringement in this case, into the stream of commerce with the expectation that they will be purchased by consumers in the Eastern District of Virginia.

11(c). According to publicly available data based on U.S. customs and other information sources, since July 1, 2007 Rexam Dispensing has made 22 shipments through the port of Norfolk, within the Eastern District of Virginia, containing “plastic pumps” and similar products to a major perfume maker.

11(d). Upon information and belief, products and components which are imported into the United States as described in paragraph 11(c), and are accused of infringement in this case, are offered for sale at at least 42 retail locations in the Eastern District of Virginia.

11(e). According to publicly available data based on U.S. Customs and other information sources, Rexam Dispensing has, since July 1, 2007, made 400 separate shipments of “plastic pumps” and similar products, to 38 different United States customers, through the ports of Norfolk, New York, Newark, and other ports in the United States.

11(f). Upon information and belief, products and components which are imported into the United States as described in paragraph 11(e), and are accused of infringement in this case, are offered for sale at retail locations in the Eastern District of Virginia.

11(g). Rexam Dispensing publishes a catalogue titled “Rexam Dispensing Systems” noting the availability of its pump products and dip tubes in the United States through a “Rexam Dispensing Systems” sales office in Purchase, New York, which products are manufactured at a “Rexam Dispensing Systems” plant in Thomaston, CT.

11(h). Rexam Dispensing issued a press release dated October 20, 2006 noting the “preview” of its “invisible dip tube” product at a Luxe Pack trade show in New York in April of that year. Upon information and belief, Rexam Dispensing has further participated in subsequent Luxe Pack trade shows in New York for the same purpose, including without limitation such a trade show held May 19 and 20, 2010.

11(i). Rexam Dispensing is the owner of seven United States Trademark registrations or applications for “plastic pumps” and related products to be used in connection with “perfume” in the United States. *See* Application Serial Number 77258079 (quoted in the preceding sentence). *See also* Registrations No. 1828892, 3807136, 3763373, 3746985 and Application Serial Nos. 78481259 and 79053083. Upon information and belief, Rexam Dispensing engages in licensing and quality control and other activities in the United States and elsewhere, designed to preserve the value of those marks in connection with sales of products in the United States.

11(j). Upon information and belief, the United States is the largest, or one of the largest, markets in the world for the products of Rexam Dispensing, and Rexam Dispensing

devotes substantial efforts towards selling its products, including the products accused of infringement in this case, to the United States market.

11(k). Rexam Dispensing is aware and intends that the pump and tube products which it sells and promotes in the United States, including the products accused of infringement in this case, will be incorporated into perfume bottles by national and international makers of perfume, as well as by national and international distributors and sold at retail outlets in the Eastern District of Virginia.

12. Rexam Beauty is subject to personal jurisdiction in the State of Virginia because Rexam Beauty has committed acts causing direct infringement, contributory infringement, and/or inducement of infringement, of one or more of the claims of the '132 Patent and the '819 Patent in this judicial district and division.

13. Valois is subject to personal jurisdiction in the State of Virginia because Valois has committed acts causing direct infringement, contributory infringement, and/or inducement of infringement, of one or more of the claims of the '132 Patent and the '819 Patent in this judicial district and division.

14. Valois of America is subject to personal jurisdiction in the State of Virginia because Valois of America has committed acts causing direct infringement, contributory infringement, and/or inducement of infringement, of one or more of the claims of the '132 Patent and the '819 Patent in this judicial district and division.

15. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because the Defendants are subject to personal jurisdiction in this district, and because Defendants have caused acts of infringement, contributory infringement, and/or inducement of infringement, to be committed in this district.

## **FACTUAL BACKGROUND**

16. The '132 Patent is directed to fragrance products having "invisible" dip tubes, and includes claims directed to assembled fragrance products and pump assemblies for use in assembled fragrance products.

17. The '132 Patent was duly and legally issued on May 18, 2010. A copy of the issued '132 Patent is attached as Exhibit A.

18. Plaintiff MWV is the lawful assignee of the '132 Patent.

19. The '819 Patent is directed to fragrance products having "invisible" dip tubes, and includes claims directed to assembled fragrance products and pump assemblies for use in assembled fragrance products.

20. The '819 Patent was duly and legally issued on May 25, 2010. A copy of the issued '819 Patent is attached as Exhibit B.

21. Plaintiff MWV is the lawful assignee of the '819 Patent.

22. Plaintiff MWV Calmar holds an exclusive license to practice the '132 Patent and the '819 Patent in the field of liquid dispenser systems for consumer fragrance packaging and is entitled to bring suit for damages according to the terms of that license.

23. By the acts described below, Rexam Dispensing and Rexam Beauty have directly and indirectly infringed the '132 Patent, and have indirectly infringed the '819 Patent, to Plaintiff's irreparable injury.

24. By the acts described below, Valois and Valois of America have directly and indirectly infringed the '132 Patent, and have indirectly infringed the '819 Patent, to Plaintiff's irreparable injury.

**COUNT I**  
**Infringement of United States Patent No. 7,718,132**  
**by Rexam Dispensing and Rexam Beauty**

25. Paragraphs 1 through 24 are incorporated by reference as if fully restated herein.

26. Rexam Dispensing and Rexam Beauty infringe the '132 Patent, directly and/or indirectly, in this District and elsewhere.

27. Upon information and belief, Rexam Beauty is Rexam Dispensing's corporate affiliate and operates under the oversight and control of Rexam Dispensing and/or under the common oversight and control of other corporate affiliates which control each defendant and cause them to coordinate their sales efforts in the United States and worldwide. Rexam Dispensing and Rexam Beauty together and separately are in the business of making and/or selling consumer packaging, including closures for perfume bottles.

28. Upon information and belief, Rexam Dispensing and Rexam Beauty market and make numerous pump products, including but not limited to the SP5, SP7 and SP8 "Crystal" pump systems, that satisfy each and every limitation of one or more claims of the '132 Patent ("the Rexam Infringing Pumps").

29. Upon information and belief, Rexam Dispensing and Rexam Beauty, use, sell, offer to sell and import the Rexam Infringing Pumps in the United States via online advertising and direct contact with customers in the United States.

29(a). Upon information and belief, Rexam Dispensing imports Rexam Infringing Pumps directly into the United States through the port of Norfolk and other ports.

30. Upon information and belief, Rexam Dispensing and Rexam Beauty sell and offer to sell the Rexam Infringing Pumps to numerous customers ("the Rexam Customers") that incorporate the Rexam Infringing Pumps into fragrance products ("the Rexam

Infringing Fragrance Products”) that are offered for sale at multiple retail locations in Richmond and McLean, Virginia. Non-limiting examples of Rexam Infringing Fragrance Products include “A Scent by Issey Miyake”. The Rexam Customers’ manufacture, use, sale, and offers to sell the Rexam Infringing Fragrance Products infringe one or more claims of the ‘132 Patent.

31. Upon information and belief, the Rexam Infringing Pumps are especially made and adapted for use in the Rexam Infringing Fragrance Products, and are not staple articles of commodities of commerce suitable for substantial noninfringing use, and Rexam and Rexam Beauty are knowledgeable of this fact.

32. On October 9, 2007, legal counsel for Rexam Beauty mailed a letter to Plaintiff’s patent prosecution counsel indicating his awareness of the application that issued as the ‘132 Patent. Accordingly, upon information and belief, Rexam Dispensing and Rexam Beauty are knowledgeable of the ‘132 Patent.

33. Upon information and belief, since October 9, 2007 Rexam Dispensing and Rexam Beauty have advised the Rexam Customers that Rexam Dispensing and Rexam Beauty would indemnify them if it was determined that they were infringing the ‘132 Patent. Based upon this information and belief, Rexam Dispensing and Rexam Beauty acted with the specific intent to induce Rexam Customers’ direct infringement of one or more claims of the ‘132 Patent.

34. Upon information and belief, Rexam Dispensing and Rexam Beauty participated in the Luxe Pack trade show on May 19<sup>th</sup> and 20<sup>th</sup>, 2010 in New York, New York, further offering for sale Rexam Infringing Pumps with invisible dip tubes, further inducing Rexam Customers’ direct infringement of one or more claims of the ‘132 Patent.



35. Accordingly, Rexam Dispensing and Rexam Beauty directly infringe, induce infringement and contribute to the infringement of the '132 Patent in this District and elsewhere, and such infringement is willful.

**COUNT II**  
**Infringement of United States Patent No. 7,722,819**  
**by Rexam Dispensing and Rexam Beauty**

36. Paragraphs 1 through 35 are incorporated by reference as if fully restated herein.

37. Rexam Dispensing and Rexam Beauty indirectly infringe the '819 Patent in this District and elsewhere.

38. Upon information and belief, Rexam Beauty is Rexam Dispensing's corporate affiliate and operates under the oversight and control of Rexam Dispensing and/or under the common oversight and control of other corporate affiliates which control each defendant and cause them to coordinate their sales efforts in the United States and worldwide. Rexam Dispensing and Rexam Beauty together and separately are in the business of making and/or selling consumer packaging, including closures for perfume bottles.

39. Upon information and belief, Rexam Dispensing and Rexam Beauty, use, sell, offer to sell and import the Rexam Infringing Pumps in the United States via online advertising and direct contact with customers in the United States.

39(a). Upon information and belief, Rexam Dispensing imports Rexam Infringing Pumps directly into the United States through the port of Norfolk and other ports.

40. Upon information and belief, Rexam Dispensing and Rexam Beauty sell and offer to sell the Rexam Infringing Pumps to the Rexam Customers that incorporate the Rexam Infringing Pumps into the Rexam Infringing Fragrance Products that are offered for sale at multiple retail locations in Richmond and McLean, Virginia. A non-limiting example

of Rexam Infringing Fragrance Products include “A Scent by Issey Miyake”. The Rexam Customers’ manufacture, use, sale, and offers to sell the Rexam Infringing Fragrance Products infringe one or more claims of the ‘819 Patent.

41. Upon information and belief, the Rexam Infringing Pumps are especially made and adapted for use in the Rexam Infringing Fragrance Products, and are not staple articles of commodities of commerce suitable for substantial noninfringing use, and Rexam Dispensing and Rexam Beauty are knowledgeable of this fact.

42. On October 9, 2007, legal counsel for Rexam Beauty mailed a letter to Plaintiff’s patent prosecution counsel indicating his awareness of the application that issued as the ‘819 Patent. Accordingly, upon information and belief, Rexam Dispensing and Rexam Beauty are knowledgeable of the ‘819 Patent.

43. Upon information and belief, since October 9, 2007 Rexam Dispensing and Rexam Beauty have advised the Rexam Customers that Rexam and Rexam Beauty would indemnify them if it was determined that they were infringing the ‘819 Patent. Based upon this information and belief, Rexam Dispensing and Rexam Beauty acted with the specific intent to induce Rexam Customers’ direct infringement of one or more claims of the ‘819 Patent.

44. Upon information and belief, Rexam Dispensing and Rexam Beauty participated in the Luxe Pack trade show on May 19<sup>th</sup> and 20<sup>th</sup>, 2010 in New York, New York, further offering for sale Rexam Infringing Pumps with invisible dip tubes, further inducing Rexam Customers’ direct infringement of one or more claims of the ‘819 Patent.

45. Accordingly, Rexam Dispensing and Rexam Beauty induce infringement and contribute to the infringement of the '819 Patent in this District and elsewhere, and such infringement is willful.

**COUNT III**  
**Infringement of United States Patent No. 7,718,132**  
**by Valois and Valois of America**

46. Paragraphs 1 through 45 are incorporated by reference as if fully restated herein.

47. Valois and Valois of America infringe the '132 Patent, directly and/or indirectly, in this District and elsewhere.

48. Upon information and belief, Valois of America is Valois' corporate affiliate and operates under Valois' oversight and control, and Valois and Valois of America together and separately are in the business of making and/or selling consumer packaging, including closures for perfume bottles.

49. Upon information and belief, Valois and Valois of America market and make numerous pump products, including but not limited to the "Elixir" pump systems, that satisfy each and every limitation of one or more claims of the '132 Patent ("the Valois Infringing Pumps").

50. Upon information and belief, Valois and Valois of America, use, sell, offer to sell and import the Valois Infringing Pumps in the United States via online advertising and direct contact with customers in the United States.

51. Upon information and belief, Valois and Valois of America sell and offer to sell the Valois Infringing Pumps to numerous customers ("the Valois Customers") that incorporate the Valois Infringing Pumps into fragrance products ("the Valois Infringing Fragrance Products") that are offered for sale at multiple retail locations in Richmond and

McLean, Virginia. Non-limiting examples of Valois Infringing Fragrance Products include “Eau Mega by Viktor & Rolf” and “Idylle by Guerlain.” The Valois Customers’ manufacture, use, sale, and offers to sell the Valois Infringing Fragrance Products infringe one or more claims of the ‘132 Patent.

52. Upon information and belief, the Valois Infringing Pumps are especially made and adapted for use in the Valois Infringing Fragrance Products, and are not staple articles of commodities of commerce suitable for substantial noninfringing use, and Valois and Valois of America are knowledgeable of this fact.

53. On June 8, 2007, a representative of Valois mailed a letter to Plaintiffs indicating its awareness of the application that issued as the ‘132 Patent. Accordingly, upon information and belief, Valois and Valois of America are knowledgeable of the ‘132 Patent.

54. Upon information and belief, since June 8, 2007 Valois and Valois of America have advised the Valois Customers that Valois and Valois of America would indemnify them if it was determined that they were infringing the ‘132 patent. Based upon this information and belief, Valois and Valois of America acted with the specific intent to induce Valois Customers’ direct infringement of one or more claims of the ‘132 Patent.

55. Upon information and belief, Valois and Valois of America participated in the Luxe Pack trade show on May 19<sup>th</sup> and 20<sup>th</sup>, 2010 in New York, New York, further offering for sale Valois Infringing Pumps with invisible dip tubes, further inducing Valois Customers’ direct infringement of one or more claims of the ‘132 Patent.

56. Accordingly, Valois and Valois of America directly infringe, induce infringement and contribute to the infringement of the '132 Patent in this District and elsewhere, and such infringement is willful.

**COUNT IV**  
**Infringement of United States Patent No. 7,722,819**  
**by Valois and Valois of America**

57. Paragraphs 1 through 56 are incorporated by reference as if fully restated herein.

58. Valois and Valois of America indirectly infringe the '819 Patent in this District and elsewhere.

59. Upon information and belief, Valois of America is Valois' corporate affiliate and operates under Valois' oversight and control, and Valois and Valois of America together and separately are in the business of making and/or selling consumer packaging, including closures for perfume bottles.

60. Upon information and belief, Valois and Valois of America market and make numerous pump products, including but not limited to the "Elixir" pump systems ("the Valois Infringing Pumps").

61. Upon information and belief, Valois and Valois of America, use, sell, offer to sell and import the Valois Infringing Pumps in the United States via online advertising and direct contact with customers in the United States.

62. Upon information and belief, Valois and Valois of America sell and offer to sell the Valois Infringing Pumps to numerous customers ("the Valois Customers") that incorporate the Valois Infringing Pumps into fragrance products ("the Valois Infringing Fragrance Products") that are offered for sale at multiple retail locations in Richmond and McLean, Virginia. Non-limiting examples of Valois Infringing Fragrance Products include "Eau Mega by Viktor & Rolf" and "Idylle by Guerlain." The Valois Customers'

manufacture, use, sale, and offers to sell the Valois Infringing Fragrance Products infringe one or more claims of the '819 Patent.

63. Upon information and belief, the Valois Infringing Pumps are especially made and adapted for use in the Valois Infringing Fragrance Products, and are not staple articles of commodities of commerce suitable for substantial noninfringing use, and Valois and Valois of America are knowledgeable of this fact.

64. On June 8, 2007, a representative of Valois mailed a letter to Plaintiffs indicating its awareness of the application that issued as the '819 Patent. Accordingly, upon information and belief, Valois and Valois of America are knowledgeable of the '819 Patent.

65. Upon information and belief, since June 8, 2007 Valois and Valois of America have advised the Valois Customers that Valois and Valois of America would indemnify them if it was determined that they were infringing the '819 Patent. Based upon this information and belief, Valois and Valois of America acted with the specific intent to induce Valois Customers' direct infringement of one or more claims of the '819 Patent.

66. Accordingly, Valois and Valois of America induce infringement and contribute to the infringement of the '819 Patent in this District and elsewhere, and such infringement is willful.

#### **PRAYER FOR RELIEF**

67. Plaintiffs have been irreparably harmed by Defendants' infringement of their valuable patent rights, and Defendants' unauthorized, infringing use of products covered by the '132 Patent and the '819 Patent has threatened the value of this intellectual property because Defendants' conduct results in Plaintiffs' loss of their lawful patent

rights to exclude others from making, using, selling, offering to sell and/or importing the patented inventions.

68. Defendants' disregard for Plaintiffs' property rights similarly threatens Plaintiffs' relationships with potential customers of products embodying this intellectual property. Defendants will derive a competitive advantage over Plaintiffs from using Plaintiffs' patented technology without paying compensation for such use. Accordingly, unless and until Defendants' continued acts of infringement are enjoined, Plaintiffs will suffer further irreparable harm for which there is no adequate remedy at law.

69. Plaintiffs are entitled to damages and remedies available to address Defendants' infringement, including but not limited to, all damages available under 35 U.S.C. § 281 *et seq.*, including injunctive relief pursuant to 35 U.S.C. § 283 and damages pursuant to 35 U.S.C. §§ 284 and 285.

70. WHEREFORE, Plaintiff prays for judgment against Defendants, granting Plaintiffs the following relief:

- a. That this Court adjudge and decree that Defendants have infringed, directly and/or indirectly, the '132 Patent and the '819 Patent;
- b. That this Court permanently enjoin Defendants, and their parents, subsidiaries, affiliates, successors and assigns, and each of their officers, directors, employees, representatives, agents, and attorneys, and all persons within its control, from making, using, selling, offering to sell, importing, or advertising products or components that infringe directly or indirectly any of the claims of the '132 Patent and the '819 Patent, or otherwise engaging in acts of infringement of the '132 Patent and the '819 Patent, all as alleged herein;

- c. That this Court order an accounting to determine the damages to be awarded to Plaintiffs as a result of Defendants' infringement;
- d. That this Court, pursuant to 35 U.S.C. § 284, enter an award to Plaintiffs of such damages as it shall prove at trial against Defendants that are adequate to compensate Plaintiffs for said infringement, including Plaintiffs' lost profits, said damages to be no less than a reasonable royalty together with interest and costs;
- e. That this Court assess pre-judgment and post-judgment interest and costs against Defendants, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284;
- f. That this Court declare this case to be exceptional and direct Defendants to pay Plaintiffs' attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. § 285;
- g. That this Court award enhanced damages and attorney's fees due to Defendants' willful infringement; and
- h. Grant to Plaintiffs such other, further, and different relief as may be just and proper.

#### **JURY DEMAND**

71. Plaintiffs demand a trial by jury of all matters to which it is entitled to trial by jury pursuant to FED. R. CIV. P. 38.



Dated: August 10, 2010

Respectfully Submitted,

MEADWESTVACO CORPORATION  
MEADWESTVACO CALMAR, INC.

By: /s/ Shelley L. Spalding

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CERTIFICATE OF SERVICE

I hereby certify that on this 10<sup>th</sup> day of August 2010, a true and correct copy of the foregoing pleading or paper was served using the Court's CM/ECF system, with electronic notification of such filing to the following counsel of record:

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I further certify that on this 10<sup>th</sup> day of August 2010, a true and correct copy of the foregoing pleading or paper was served via U.S. Postal Service first-class mail to the following:

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