

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

POLY-AMERICA L.P. , a Texas limited partnership,

Plaintiff,

vs.

**PRESTO PRODUCTS COMPANY, a
business of ALCOA CONSUMER
PRODUCTS division of ALCOA, INC., a
Pennsylvania corporation,**

Defendant.

Civil Action No. 2:07-CV-350 (TJW)

JURY TRIAL DEMANDED

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff POLY-AMERICA L.P. for its Amended Complaint against Defendant PRESTO PRODUCTS COMPANY, a business of ALCOA CONSUMER PRODUCTS, a division of ALCOA, INC., alleges as follows:

THE PARTIES

1. Poly-America LP ("Poly-America") is a limited partnership duly organized and existing under the laws of the State of Texas.

2. Poly-America is informed and believes, and on that basis alleges, that Defendant Presto Products Company (“Presto”) is a business of Alcoa Consumer Products, which is a division owned by Alcoa, Inc. Alcoa, Inc. is a corporation duly organized and existing under the laws of the state of Pennsylvania, having its principal place of business in New York, New York. Presto has already appeared in this action.

JURISDICTION AND VENUE

3. The court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. §§1 *et seq.* Venue is proper in this federal district pursuant to 28 U.S.C. §§1391(b)-(c) and 1400(b) in

that Presto has done business in this District, has committed acts of infringement in this District, and continues to commit acts of infringement in this District, entitling Poly-America to relief.

INFRINGEMENT OF U.S. PATENT NO. 5,742,840

4. On May 23, 2006, United States Patent No. 7,048,224 B2 (“the ‘224 patent”) was duly and legally issued for an invention entitled “Wave-Cut Overlapping Trash Bags.” Olympic General Corporation (“Olympic”) is the assignee of the ‘224 Patent, owning all rights, title and interest in and to the ‘224 Patent. On December 31, 2007, Olympic merged into Poly-America, making Poly-America the current owner of all rights, title and interest in the ‘224 patent. Prior to the merger, Poly-America was the exclusive licensee of the ‘224 Patent. Poly-America has always marked its covered products accordingly. A true and correct copy of the '224 patent is attached hereto as Exhibit A.

5. Presto has infringed and continues to infringe the '224 patent by its manufacture, use, sale, importation, and/or offer for sale of products utilizing the process for assembling wave-cut overlapping trash bags taught by the ‘224 Patent, and its contributing to and inducement of others to use, sell, and/or offer for sale of infringing products. Presto is liable for its infringement of the '224 patent pursuant to 35 U.S.C. § 271.

6. Presto’s acts of infringement have caused damage to Poly-America, and Poly-America is entitled to recover from Presto the damages sustained by them as a result of Presto’s wrongful acts in an amount subject to proof at trial. Presto’s infringement of the exclusive rights of Poly-America under the '224 patent will continue to damage Poly-America, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

7. Upon information and belief, Presto’s infringement of the '224 patent is willful and deliberate, entitling Poly-America to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

JURY DEMAND

8. Poly-America demands a trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Poly-America requests entry of judgment in its favor and against Presto as follows:

- a) Declaration that Presto has infringed U.S. Patent No. 7,048,224 B2;
- b) Permanently enjoining Presto, and, the respective officers, agents, employees, and those acting in privity with it, from further infringement, contributory infringement and/or inducing infringement of U.S. Patent Nos. 7,048,224 B2;
- c) Awarding the damages arising out of Presto's infringement of U.S. Patent No. 7,048,224 B2, including enhanced damages pursuant to 35 U.S.C. § 284, to Poly-America, together with prejudgment and post-judgment interest, in an amount according to proof;
- d) An award of attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and
- e) For such other costs and further relief as the Court may deem just and proper.

DATED: January 24, 2008

Respectfully submitted,

By: /s/ Robert Christopher Bunt

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Attorneys for POLY-AMERICA L.P.

CERTIFICATE OF SERVICE

I hereby certify that the following counsel of record who are deemed to have consented to electronic service are being served this 24th day of January, 2008, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by, electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Robert Christopher Bunt
ROBERT CHRISTOPHER BUNT