

**PORZIO, BROMBERG & NEWMAN, P.C.**

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

**AEP INDUSTRIES, INC.,**

**Plaintiff,**

**v.**

**METAL EDGE INTERNATIONAL,  
INC., POLYVINYL FILMS, INC.,  
ANCHOR PACKAGING, INC., and  
REYNOLDS FOOD PACKAGING LLC,**

**Defendants.**

**CIVIL ACTION NO. 2:11-cv-03560 (SRC/MAS)**

**FIRST AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT**

**Jury Trial Demanded**

AEP Industries, Inc., (“AEP”), brings this Complaint against Defendants Metal Edge International, Inc., Polyvinyl Films, Inc., Anchor Packaging, Inc. and Reynolds Food Packaging LLC and alleges as follows:

**THE PARTIES**

1. AEP is a Delaware Corporation with its principal place of business at 125 Phillips Avenue, South Hackensack, New Jersey 07606.
2. AEP is in the business of, *inter alia*, the development, manufacturing and selling of plastic film and plastic film cutting devices, including the film cutting devices covered by the

United States Patents at issue in this action.

3. Defendant Metal Edge International, Inc. (“Metal Edge”) is, upon information and belief, a Pennsylvania Corporation with its principal place of business at 337 West Walnut Street, P.O. Box 1488, North Wales, PA 19454. Metal Edge, upon information and belief, is doing business in the State of New Jersey, including business within this judicial district, and/or has committed or induced acts of patent infringement as complained of herein within this judicial district. Metal Edge may be served with process by serving its registered agent, Secretary of State, located at 337 West Walnut Street, North Wales, PA 19454.

4. Anchor Packaging, Inc. (“Anchor”) is, by information and belief, a Missouri Corporation, located and doing business at 13515 Barrett Parkway, St. Louis, Missouri 63021. Upon information and belief, Anchor is doing business in the State of New Jersey, including business within this judicial district, and/or has committed or induced acts of patent infringement as complained of herein within this judicial district. Anchor may be served with process by serving its registered agent, Robert R. Herman, 7701 Forsyth Blvd., 10<sup>th</sup> floor, St. Louis MO 63102.

5. Polyvinyl Films, Inc. (“Polyvinyl”) is, upon information and belief, a Massachusetts Corporation, located and doing business at 19 Depot Street, P.O. Box 753, Sutton, Massachusetts 01590. Upon information and belief, Polyvinyl is doing business in the State of New Jersey, including business within this judicial district, and/or has committed or induced acts of patent infringement as complained of herein within this judicial district. Polyvinyl may be served with process by serving its registered agent, Robert Baldwin, PO Box 753, 19 Depot Street, Sutton, MA 01590.

6. Reynolds Food Packaging LLC (“Reynolds”) is, upon information and belief, a Delaware Limited Liability Company, located and doing business at 6641 West Broad Street, 5<sup>th</sup> Floor, Richmond, VA 23230-1700. Upon information and belief, Reynolds is doing business in the State of New Jersey, including business within this judicial district, and/or has committed or induced acts of patent infringement as complained of herein within this judicial district. Reynolds may be served with process by serving its registered agent, National Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover, Delaware 19904.

### **JURISDICTION AND VENUE**

7. This is an action for infringement of United States patents and arises under the patent laws of the United States of America, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271 and 281.

8. This Court has jurisdiction over the subject matter of this dispute pursuant to 28 U.S.C. §1338(a).

9. Venue is proper in this district under 28 U. S. C. §§ 1391 (b) and (c) and 1400(b). Upon information and belief, each defendant named herein transacts or has transacted business in this judicial district or committed and/or induced acts of patent infringement in this district.

### **COUNT I** **INFRINGEMENT OF UNITED STATES PATENT 7,921,756 B1**

10. On April 12, 2011, United States Patent No. 7,921,756 B1 entitled FILM CUTTER ASSEMBLY (the ‘756 Patent) was duly and legally issued to Paul Vegliante, Sean Neiberger, Rudolf Pavlik and Ian Kaiser. A true and correct copy of the ‘756 Patent is attached to this complaint as **Exhibit A**.

11. Pursuant to 35 U.S.C. § 282, the ‘756 Patent is presumed valid.

12. AEP is the owner by assignment of all rights, title and interest in the '756 Patent including the right to sue for past, present and future infringement and collect damages there from, as well as reasonable royalties accruing from the date of the publication of the application for the '756 Patent, February 28, 2002, up to the issuance of the '756 Patent on April 12, 2011, pursuant to 35 U.S.C. § 154(d).

13. Independent claim 1 of the '756 Patent states:

1. A film cutter apparatus for cutting plastic wrap comprising:  
an elongated rail base;  
a pair of rails formed at a top surface of said elongated rail base and a channel formed within said rail base and between said rails;  
and a blade housing formed of an upper portion and a lower portion;  
said upper portion of said blade housing houses a blade but no wheels, a bottom edge of said upper portion of said blade housing protruding on either end from said blade and an end surface being rounded and inclined upwardly and from either end of said bottom edge, said blade is non-rotatable supported in said housing and is angled from said bottom edge of said upper portion and depends from the upper portion to the lower portion and can cut in both directions;  
said lower portion of said blade housing slidably moving in said channel, wherein said pair of rails are formed of a first material comprising polyvinyl chloride comprising at least 10% plasticizer which provides an attraction to said plastic wrap received over said rails for attracting said plastic wrap received over said rails for clinging said plastic wrap to said rails before, during and after cutting of said plastic wrap by sliding said blade housing within said channel, wherein said elongated base rail is formed of a second, different material of rigid vinyl or rigid PVC and said first material is coextruded with said second material.

14. AEP is informed and believes that each and every defendant named herein infringes, at a minimum, claim 1 of the '756 Patent either directly or indirectly.

15. Each and every defendant named herein makes, and/or imports, uses, offers to sell, and/or sells at least one plastic film cutting device that incorporates the elements of one or

more of the claims of the '756 Patent, including the elements of claim 1.

16. AEP is informed and believes that each and every defendant named herein has copied, or substantially copied, AEP's film cutter devices embodied within the '756 Patent, and has, and is currently, making, and/or importing, using, offering to sell, and/or selling a least one plastic film cutting device that is a copy, or a substantial copy, of AEP's film cutter devices embodied within the '756 Patent.

17. Specifically, each and every defendant named herein makes, and/or imports, uses, offers for sale, and/or sells infringing plastic film cutters, which are copies, or substantial copies, of AEP's patented film cutters. In summary, defendants' film cutters that infringe the '756 patent have a housing/blade assembly that cuts film as it slides in a channel or cavity between two rails formed within a rail base. The blade is supported in the housing, but is not rotatable, and can cut film in both directions of the channel. Defendants' blade/ housing assembly has an upper portion, a middle portion, and a lower portion. The upper portion houses the blade, but does not have wheels, and has a bottom edge which protrudes on either end from the blade, and has an end surface that is rounded and inclined upwardly from either end of the bottom edge; the blade is angled from the bottom edge. The rail base is formed of a material having durability properties such as rigid vinyl or polyvinyl chloride ("PVC"), and the rails are formed of another material that is made of polyvinyl chloride comprising at least 10% of a plasticizer that provides a cling attraction to the film placed over the rails before, during and after the cutting of the film by the sliding of the blade housing within the channel. In addition, the rail base and rail materials can be coextruded to form the rail base/rail structure.

**ALLEGATIONS OF INFRINGEMENT OF THE  
'756 PATENT AS TO SPECIFIC DEFENDANTS**

18. Paragraphs 1 to 17 are specifically incorporated as if the same were set forth in full herein.

19. Defendant Metal Edge has infringed and continues to infringe the '756 Patent by making, using, offering to sell, selling and/or importing plastic film cutting devices that infringe one or more claims of the '756 Patent either literally or under the doctrine of equivalents.

20. Accordingly, Metal Edge's infringement of the '756 Patent has injured AEP and thus, AEP is entitled to recover damages adequate to compensate it for Metal Edge's acts of infringement, which in no event can be less than a reasonable royalty.

21. Defendant Anchor has infringed and continues to infringe the '756 Patent by making, using, offering to sell, selling and/or importing plastic film cutting devices that infringe one or more claims of the '756 Patent either literally or under the doctrine of equivalents.

22. Accordingly, Anchor's infringement of the '756 Patent has injured AEP and thus, AEP is entitled to recover damages adequate to compensate it for Anchor's acts of infringement, which in no event can be less than a reasonable royalty.

23. Defendant Polyvinyl has infringed and continues to infringe the '756 Patent by making, using, offering to sell, selling and/or importing plastic film cutting devices that infringe one or more claims of the '756 Patent either literally or under the doctrine of equivalents.

24. Accordingly, Polyvinyl's infringement of the '756 Patent has injured AEP and thus, AEP is entitled to recover damages adequate to compensate it for Polyvinyl's acts of infringement, which in no event can be less than a reasonable royalty.

25. Defendant Reynolds has infringed and continues to infringe the '756 Patent by

making, using, offering to sell, selling and/or importing plastic film cutting devices that infringe one or more claims of the '756 Patent either literally or under the doctrine of equivalents.

26. Accordingly, Reynolds' infringement of the '756 Patent has injured AEP and thus, AEP is entitled to recover damages adequate to compensate it for Reynolds' acts of infringement, which in no event can be less than a reasonable royalty.

**COUNT II**  
**CLAIMS OF INFRINGEMENT OF PATENT 7,918,151 B2**

27. On April 5, 2011, United States Patent No. 7,918,151 B2 entitled FILM CUTTER ASSEMBLY (the '151 Patent) was duly and legally issued to Paul Vegliante, Sean Neiberger, Rudolf Pavlik and Ian Kaiser. A true and correct copy of the '151 Patent is attached to this complaint as **Exhibit B**.

28. Pursuant to 35 U.S.C. § 282, the '151 Patent is presumed valid.

29. AEP is the owner by assignment of all rights, title and interest in the '151 Patent, including the right to sue for past, present and future infringement and collect damages therefrom, as well as reasonable royalties accruing from the date of the publication of the application for the '151 Patent, August 29, 2002, up to the issuance of the '151 Patent on April 5, 2011 pursuant to 35 U.S.C. § 154(d).

30. Independent claim 1 of the '151 Patent states:

1. A film cutter apparatus for cutting plastic wrap comprising:  
an elongated rail base;  
at least two rails formed at a top surface of said elongated rail base and a channel formed within said rail base;  
a blade housing including a non-rotationally mounted blade and no wheels, said blade housing bilaterally slidable along said at least two rails, a bottom edge of an upper

portion of said blade housing protruding on either end from said blade and an end surface being slanted and inclined upwardly and from either end of said bottom edge, said blade is angled from a bottom edge of said blade housing and a lower sliding member to cut in both directions; and

said lower sliding member slidably moving in said channel and a portion of said at least two rails being formed of a first material comprising polyvinyl chloride comprising at least 10% plasticizer which provides cling properties to said plastic wrap received over said at least one rail before, during and after cutting of said plastic wrap; and

wherein said elongated rail base is formed of a second, different material of rigid PVC, said first material is coextruded with said second material.

31. AEP is informed and believes that each and every defendant named herein infringes, at a minimum, claim 1 of the '151 Patent either directly or indirectly.

32. Each and every defendant named herein makes, and/or imports, uses and/or sells at least one plastic film cutting device that incorporates the elements of one or more of the claims of the '151 Patent, including the elements of claim 1.

33. Specifically, each and every defendant named herein makes, and/or imports, uses, offers for sale, and/or sells infringing film cutters which are copies, or substantial copies, of AEP's patented film cutters. In summary, defendants' infringing film cutters have an elongated rail base, at least two rails on top of the rail base and a channel formed within the base. They also include a blade housing with a non-rotationally mounted blade, but no wheels. The blade housing bilaterally slides along the rails. A bottom edge of an upper portion of the blade housing protrudes on either end from of the blade, and has an end surface that is slanted and inclined upwardly and from either end of the bottom edge. Also the blade is angled from the bottom edge of the blade housing. Defendants' infringing film cutters also have a lower sliding member to



cut in both directions of the rail. The sliding member moves in the channel. A portion of the rails is formed of a first material comprising polyvinyl chloride with at least 10% plasticizer to provide cling properties to plastic wrap received over the rails before, during and after cutting of said plastic wrap. The rail base of defendants' film cutters is formed of one material with rigid PVC and is coextruded with the other material.

**ALLEGATIONS OF INFRINGEMENT OF THE '151 PATENT**  
**AS TO THE SPECIFIC DEFENDANTS**

34. Paragraphs 1 to 9 and 27 to 33 are specifically incorporated as if same were set forth in full herein.

35. Defendant Metal Edge has infringed and continues to infringe the '151 Patent by making, using, selling, offering to sell and/or importing plastic film cutting devices that infringe one or more claims of the '151 Patent either literally or under the doctrine of equivalents.

36. Accordingly, Metal Edges' infringement of the '151 Patent has injured AEP and thus, AEP is entitled to recover damages adequate to compensate it for Metal Edge's acts of infringement, which in no event can be less than a reasonable royalty.

37. Defendant Anchor has infringed and continues to infringe the '151 Patent by making, using, selling, offering to sell and/or importing plastic film cutting devices that infringe one or more claims of the '151 Patent either literally or under the doctrine of equivalents.

38. Accordingly, Anchor's infringement of the '151 Patent has injured AEP and thus, AEP is entitled to recover damages adequate to compensate it for Anchor's acts of infringement, which in no event can be less than a reasonable royalty.

39. Defendant Polyvinyl has infringed and continues to infringe the '151 Patent by making, using, selling, offering to sell and/or importing plastic film cutting devices that infringe

one or more claims of the '151 Patent either literally or under the doctrine of equivalents.

40. Accordingly, Polyvinyl's infringement of the '151 Patent has injured AEP and thus, AEP is entitled to recover damages adequate to compensate it for Polyvinyl's acts of infringement, which in no event can be less than a reasonable royalty.

41. Defendant Reynolds has infringed and continues to infringe the '151 Patent by making, using, selling, offering to sell and/or importing plastic film cutting devices that infringe one or more claims of the '151 Patent either literally or under the doctrine of equivalents.

42. Accordingly, Reynolds' infringement of the '151 Patent has injured AEP and thus, AEP is entitled to recover damages adequate to compensate it for Reynolds' acts of infringement, which in no event can be less than a reasonable royalty.

**WHEREFORE**, AEP prays for Judgment as follows:

A. Declaring that Metal Edge has infringed one or more of the claims of United States Patent No. 7,921,756 B2.

B. Temporarily, preliminarily and permanently enjoining Metal Edge, its officers, directors, agents, subsidiaries and employees, and those in privity or in active concert with them, from further activities that constitute infringement, contributory infringement and/or inducing infringement of Patent 7,921,756 B2.

C. Awarding lost profits or a reasonable royalty and other damages arising from Metal Edge's infringement of United States Patent No. 7,921,756 B2, and royalties accruing from the date of the publication of the application for the patent up to issuance thereof, including treble damages, to AEP, together with prejudgment and post-judgment interest, in an amount according to proof.

D. Declaring that this is an “exceptional case” within the meaning of 35 U.S.C. §285 and awarding treble damages and reasonable attorneys fees to AEP.

E. Declaring that Metal Edge has infringed one or more of the claims of United States Patent No. 7,918,151 B2.

F. Temporarily, preliminarily and permanently enjoining Metal Edge, its officers, directors, agents, subsidiaries and employees, and those in privity or in active concert with them, from further activities that constitute infringement, contributory infringement and/or inducing infringement of Patent No. 7,918,151 B2.

G. Awarding lost profits or a reasonable royalty and other damages arising from Metal Edge’s infringement of United States Patent No. Patent No. 7,918,151 B2, and royalties accruing from the date of the publication of the application for the patent up to issuance thereof, including treble damages, to AEP, together with prejudgment and post-judgment interest, in an amount according to proof.

H. Declaring that this case is an “exceptional case” within the meaning of 35 U.S.C. §285 and awarding treble damages and reasonable attorneys fees to AEP.

I. Declaring that Polyvinyl has infringed one or more of the claims of United States Patent No. 7,921,756 B2.

J. Temporarily, preliminarily and permanently enjoining Polyvinyl, its officers, directors, agents, subsidiaries and employees, and those in privity or in active concert with them, from further activities that constitute infringement, contributory infringement and/or inducing infringement of Patent 7,921,756 B2.

K. Awarding lost profits or a reasonably royalty and other damages arising from Polyvinyl's infringement of United States Patent No. 7,921,756 B2, and royalties accruing from the date of the publication of the application for the patent up to issuance thereof, including treble damages, to AEP, together with prejudgment and post-judgment interest, in an amount according to proof.

L. Declaring that this case is an "exceptional case" within the meaning of 35 U.S.C. §285 and awarding treble damages and reasonable attorneys fees to AEP.

M. Declaring that Polyvinyl has infringed one or more of the claims of United States Patent No. 7,918,151 B2.

N. Temporarily, preliminarily and permanently enjoining Polyvinyl, its officers, directors, agents, subsidiaries and employees, and those in privity or in active concert with them, from further activities that constitute infringement, contributory infringement and/or inducing infringement of Patent No. 7,918,151 B2.

O. Awarding lost profits or a reasonably royalty and other damages arising from Polyvinyl's infringement of United States Patent No. Patent No. 7,918,151 B2, and royalties accruing from the date of the publication of the application for the patent up to issuance thereof, including treble damages, to AEP, together with prejudgment and post-judgment interest, in an amount according to proof.

P. Declaring that this case is an "exceptional case" within the meaning of 35 U.S.C. §285 and awarding treble damages and reasonable attorneys fees to AEP.

Q. Declaring that Anchor has infringed one or more of the claims of United States Patent No. 7,921,756 B2.

R. Temporarily, preliminarily and permanently enjoining Anchor, its officers, directors, agents, subsidiaries and employees, and those in privity or in active concert with them, from further activities that constitute infringement, contributory infringement and/or inducing infringement of Patent 7,921,756 B2.

S. Awarding lost profits or a reasonably royalty and other damages arising from Anchor's infringement of United States Patent No. 7,921,756 B2, and royalties accruing from the date of the publication of the application for the patent up to issuance thereof, including treble damages, to AEP, together with prejudgment and post-judgment interest, in an amount according to proof.

T. Declaring that this case is an "exceptional case" within the meaning of 35 U.S.C. §285 and awarding treble damages and reasonable attorneys fees to AEP.

U. Declaring that Anchor has infringed one or more of the claims of United States Patent No. 7,918,151 B2.

V. Temporarily, preliminarily and permanently enjoining Anchor, its officers, directors, agents, subsidiaries and employees, and those in privity or in active concert with them, from further activities that constitute infringement, contributory infringement and/or inducing infringement of Patent No. 7,918,151 B2.

W. Awarding lost profits or a reasonably royalty and other damages arising from Anchor's infringement of United States Patent No. Patent No. 7,918,151 B2, and royalties

accruing from the date of the publication of the application for the patent up to issuance thereof, including treble damages, to AEP, together with prejudgment and post-judgment interest, in an amount according to proof.

X. Declaring that this case is an “exceptional case” within the meaning of 35 U.S.C. §285 and awarding treble damages and reasonable attorneys fees to AEP.

Y. Declaring that Reynolds has infringed one or more of the claims of United States Patent No. 7,921,756 B2.

Z. Temporarily, preliminarily and permanently enjoining Reynolds, its officers, directors, agents, subsidiaries and employees, and those in privity or in active concert with them, from further activities that constitute infringement, contributory infringement and/or inducing infringement of Patent 7,921,756 B2.

AA. Awarding lost profits or a reasonably royalty and other damages arising from Reynolds’ infringement of United States Patent No. 7,921,756 B2, and royalties accruing from the date of the publication of the application for the patent up to issuance thereof, including treble damages, to AEP, together with prejudgment and post-judgment interest, in an amount according to proof.

BB. Declaring that this case is an “exceptional case” within the meaning of 35 U.S.C. §285 and awarding treble damages and reasonable attorneys fees to AEP.

CC. Declaring that Reynolds has infringed one or more of the claims of United States Patent No. 7,918,151 B2.

DD. Temporarily, preliminarily and permanently enjoining Reynolds, its officers, directors, agents, subsidiaries and employees, and those in privity or in active concert with them, from further activities that constitute infringement, contributory infringement and/or inducing infringement of Patent No. 7,918,151 B2.

EE. Awarding lost profits or a reasonably royalty and other damages arising from Reynolds' infringement of United States Patent No. Patent No. 7,918,151 B2, and royalties accruing from the date of the publication of the application for the patent up to issuance thereof, including treble damages, to AEP, together with prejudgment and post-judgment interest, in an amount according to proof.

FF. Declaring that this case is an "exceptional case" within the meaning of 35 U.S.C. §285 and awarding treble damages and reasonable attorneys fees to AEP.

GG. Declaring that AEP be granted such other and further relief as the Court may deem just and proper under the circumstances.

**DEMAND FOR JURY TRIAL**

AEP hereby demands a jury trial on all claims and issues.

Dated: June 23, 2011

Respectfully submitted,

**PORZIO, BROMBERG & NEWMAN, P.C.**

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