

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

SUMMIT PACKAGING SYSTEMS, INC.	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 09-228
	§	
	§	Jury Demanded
APTARGROUP, INC., AND	§	
SEAQUISTPERFECT DISPENSING, LLC	§	
Defendants.	§	

**COMPLAINT FOR DECLARATORY JUDGMENT OF
NONINFRINGEMENT OF U.S. PATENT NO. RE. 35,540**

COMPLAINT

Plaintiff Summit Packaging Systems Inc., (“Summit”), for its Complaint against AptarGroup Inc., (“Aptar”), and SeaquistPerfect Dispensing LLC, (“Seaquist”) hereby demands a jury trial and alleges as follows:

NATURE OF THE ACTION

1. This is an action for a declaratory judgment of noninfringement of U.S. Reissue Patent No. 35,540, the (“`540 patent”) pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and the Patent Laws of the United States, 35 U.S.C. § 100 *et seq.*, tortuous interference with business relations and for unfair competition under the New Hampshire Consumer Protection Act, RSA 358-A, and for such other relief as the Court deems just and proper. A copy of the `540 patent is attached hereto as Exhibit A.

2. Summit manufactures, distributes and sells products known as Bag-On-Valves. Bag-On-Valves are used to dispense among other things personal hygiene products. Defendants Aptar and Seaquist claim the exclusive right to manufacture, distribute and sell Bag-On-Valve products falling under the `540 patent which are used to dispense among other things personal hygiene products. On or about June 19, 2009, Aptar sent Summit correspondence demanding that Summit cease and desist manufacturing, distributing and selling its Bag-On-Valves because Aptar believes the `540 patent gives it the exclusive right to manufacture, distribute and sell certain Bag-On-Valves. Summit disagrees with Aptar because Summit's Bag-On-Valves do not infringe the `540 patent and, therefore, Aptar and Seaquist do not have the exclusive legal rights they claim to have. Accordingly, Summit seeks a declaratory judgment from this Court to determine the parties' respective rights. Summit also seeks money damages for Aptar's and Seaquist's tortious conduct and unfair competition.

THE PARTIES

3. Plaintiff Summit is a New Hampshire corporation that manufactures product-dispensing aerosol valves and actuators having a principal place of business at 400 Gay Street, Manchester, New Hampshire.

4. On information and belief, Defendant Aptar is an Illinois corporation having a principal place of business at 475 West Terra Cotta, Suite E, Crystal Lake, Illinois.

5. On information and belief, Defendant Seaquist is an Illinois corporation being a wholly owned subsidiary of Aptar, and having a principal place of business at 1160 North Silver Lake Road, Cary, Illinois.

6. As alleged herein, Aptar and Seaquist have engaged in various acts in and directed to New Hampshire.

JURISDICTION AND VENUE

7. This Court has original subject matter jurisdiction of this Complaint under 28 U.S.C. §§ 1331 and 1338(a) in that the issues involve substantial claims arising under the United States Patent Act, 35 U.S.C. § 100 *et seq.*

8. This Court also has jurisdiction to declare the rights and other legal relations of the parties pursuant to 28 U.S.C. §§ 2201 and 2202 because the parties all claim the legal right to manufacture, distribute and sell the products that Aptar claims fall under the `540 patent. Therefore, there exists an actual case and controversy among the parties relative to Summit's Bag-On-Valves and noninfringement of the `540 patent.

9. Venue is proper in this district under 28 U.S.C. § 1391(b) because the events giving rise to this claim arose in New Hampshire and the property which is the subject of this action is situated in New Hampshire.

10. Aptar purports its subsidiary Seaquist to be the owner of rights in the `540 patent. By a letter dated June 19, 2009, Aptar asserts that the `540 patent relates to a Bag-On-Valve product manufactured by Summit and that the `540 patent is infringed by the Bag-On-Valve product. A copy of the June 19th correspondence is attached hereto as Exhibit B. Aptar carbon copied its June 19 letter to Summit's customer, Proctor & Gamble. In its June 19 letter Aptar also demanded that Summit immediately cease and desist from manufacturing, selling, importing and offering for sale the Bag-On-Valve product. Summit has not infringed and does not infringe, either directly or indirectly, upon any valid and enforceable claim of the `540 patent, either literally or under the doctrine of equivalents. Similarly Summit is unaware of any infringement of the `540 patent. A substantial controversy exists between the parties which is of sufficient

immediacy and reality to warrant declaratory relief. This case thus presents an actual controversy within 28 U.S.C. § 2201.

11. This Court has personal jurisdiction over Aptar. Aptar has regularly conducted business in and directed products to New Hampshire, including, *inter alia*, business pertaining to the `540 patent, and has engaged in various acts in and directed to New Hampshire.

12. This Court has personal jurisdiction over Seaquist. Seaquist regularly conducts business directed to New Hampshire, including, *inter alia*, business pertaining to the `540 patent, has sued Summit before and in doing so has engaged in various acts in and directed to New Hampshire.

THE `540 PATENT

13. On information and belief, Seaquist is a wholly owned subsidiary of Aptar and also allegedly the owner of all right, title and interest in the `540 patent as set forth above.

14. The `540 patent is entitled “Product Bag For Dispensing And Method For Producing The Same” and bears an issuance date of June 24, 1997.

15. The `540 patent is a “Reissue” patent of U.S. Patent No. 5,169,037, (“the `037 patent”) having the same title, and the `037 patent bears an issuance date of December 8, 1992. A copy of the `037 patent is attached hereto as Exhibit C.

16. The reissued `540 patent includes amendments to the original claims 1, 4, 8 and 10 of the `037 patent, and also added new claims 11-20 which were not present in the originally filed `037 patent.

The reissued `540 patent has a patent term which expires on January 26, 2010

**COUNT I - DECLARATION OF NONINFRINGEMENT OF
THE `540 PATENT**

17. Summit repeats and realleges the allegations in paragraphs 1-16 above as though fully set forth herein.

18. Summit has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the `540 patent.

19. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

20. A judicial declaration is necessary and appropriate so that Summit may ascertain its rights regarding the `540 patent.

COUNT II – TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

21. Summit repeats and realleges the allegations in paragraphs 1-21 above as though fully set forth herein.

22. Aptar is engaged in trade or commerce in New Hampshire.

23. Summit has business and contractual relationships with Proctor & Gamble, and by its letter of June 19, 2009 Aptar knew of the relationship between Summit and Aptar.

24. The carbon copied letter of June 19, 2009 alleging infringement of the `540 patent is intended to cause or induce Proctor & Gamble not to enter into, or continue, ongoing business and contractual relationships with Summit.

25. Therefore, Aptar has tortiously interfered with Summit's business relationship with Proctor & Gamble in violation of New Hampshire law and this interference has harmed the economic relations between Summit and Proctor & Gamble resulting in economic damage to Summit.

**COUNT III – UNFAIR COMPETITION UNDER NEW HAMPSHIRE
CONSUMER PROTECTION ACT**

26. Summit repeats and realleges the allegations in paragraphs 1-26 above as though fully set forth herein.

27. Aptar's allegations of infringement of the '540 patent are without factual or legal basis and constitute an unfair method of competition undertaken solely for the purposes of subjecting Summit to the costs of patent litigation and/or gain an unfair monopoly and/or increase the price of the product and/or interfere with the business and contractual relations between Summit and Proctor & Gamble.

28. Aptar has committed acts of unfair competition and/or unfair or deceptive acts or practices which fall within New Hampshire's Consumer Protection Act, RSA 358-A, and one or more of the enumerated unlawful acts set forth under RSA 358-A:2, and that Aptar be enjoined from further charging or threatening to charge Summit or its customers with infringement of the '540 patent.

29. Aptar, by disingenuously alleging infringement of the '540 patent in its June 19, 2009 letter to Summit and carbon copying Proctor & Gamble, are thus disparaging Summit and attempting to unfairly control the pricing of Bag-On-Valve products in a manner that maintains or extends an unlawful monopoly.

30. Summit has been injured by Aptar's allegations of infringement and has suffered irreparable harm as to the continuance of which monetary relief is not sufficient.

PRAYER FOR RELIEF

WHEREFORE, Summit respectfully requests this Honorable Court:

(a) Issue a Declaratory Judgment finding that Summit does not infringe, directly or indirectly, or contribute to, or induce the infringement of any valid or enforceable claim of the `540 patent;

(b) Issue a Declaratory Judgment ordering Aptar, its officers, agents, counsel, servants and employees and all persons in active concert or participation with any of them, be enjoined from charging infringement of or instituting any action for infringement of the `540 patent against Summit or its customers;

(c) Issue a Declaratory Judgment finding and ordering that this is an exceptional case under 35 U.S.C. § 285 and that Summit be awarded its reasonable attorneys fees, expenses and costs in this action;

(d) Issue a Declaratory Judgment finding and ordering that Summit be awarded its damages and its mandatory costs and attorneys fees under N.H. RSA 358A:10; and

(e) Grant Summit such further necessary and proper relief as justice may require.

Respectfully submitted
Summit Packaging Systems Inc.,
By its attorney

/s/ Scott A. Daniels

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