

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Noam J. Kritzer (nkritzer@bakoskritzer.com)
Edward P. Bakos (ebakos@bakoskritzer.com)

Bakos & Kritzer
147 Columbia Turnpike
Florham Park, New Jersey 07932
Telephone: 908-273-0770
Facsimile: 973-520-8260
NJK-6122
EPB-0778

Attorneys for the Plaintiff:
Keystone Folding Box Company

KEYSTONE FOLDING BOX COMPANY)
(a New Jersey company),)

Plaintiff,)

v.)

MeadWestvaco Corporation.)
(a Delaware corporation),)

Defendant.)

CIVIL ACTION FILE NUMBER:

Document filed Electronically

COMPLAINT FOR DECLARATORY JUDGMENT AND DEMAND FOR JURY TRIAL

This is an action brought under the Declaratory Judgment Act by plaintiff Keystone Folding Box Company ("Keystone"), having a business located at 367 Verona Avenue Newark, New Jersey 07104, against defendant MeadWestvaco Corporation ("MWV"), upon information and belief, having a business located at 501 South 5th Street, Richmond, Virginia 23219.

As and for Keystone's complaint against MWV, Keystone alleges as follows:

THE PARTIES

1. Plaintiff Keystone Folding Box Company ("Keystone") is a privately held company incorporated under the laws of the State of New Jersey, with its principal place of business at 367 Verona Avenue Newark, New Jersey 07104.

2. Upon information and belief, Defendant MeadWestvaco Corporation ("MWV") is a Delaware corporation with its principal place of business at 501 South 5th Street, Richmond, Virginia 23219. Defendant MWV may be served with process via its registered agent The Corporation Trust Company, 820 Bear Tavern Road, West Trenton, New Jersey, 08628.

JURISDICTION AND VENUE

3. This is a civil action for declaratory judgment brought under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 et seq. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C § 1331 and 28 U.S.C. §1338(a), as it involves substantial claims arising under the Patent Laws of the United States together with related claims for patent infringement.

4. Upon information and belief, MWV solicits business, conducts business including maintaining three known sales offices in the State of New Jersey located at 24 Lynn Court, North Brunswick, New Jersey 08902, 146 East River Road, Rumson, New Jersey 07760, and 24 Knollwood Drive, Tinton Falls, New Jersey 07724, and collects taxes within the State of New Jersey and within this judicial district. Therefore, MWV is subject to the personal jurisdiction of this Court pursuant to the laws of the State of New Jersey and the Federal Rules of Civil Procedure.

5. MWV has purposefully and actively availed itself of the jurisdiction of this Court by entering this jurisdiction in connection with matters giving rise to this action.

6. Keystone is alleged by MWV to have committed acts of patent infringement in this district and Keystone resides in this district.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

8. Subject matter jurisdiction is conferred upon this Court by 28 U.S.C. § 1338(a).

BACKGROUND

9. Founded circa 1890, Keystone engages in the design and manufacture of paperboard packaging products nationwide, including within this district.

10. Among the products sold by Keystone is the "Key-Pak® Blister Card"(the "Accused Product.>").

11. MWV has alleged that it is the owner of U.S. Patent No. 7,401,702 entitled "Child-Resistant Blister Package" ("the '702 patent").

THE CONFLICT

12. On April 27, 2012, attorney Nicholas B. Clifford, Jr. of the law firm of Armstrong Teasdale, LLP, forwarded correspondence to Keystone accusing Keystone of infringing the '702 patent. A copy of the correspondence is attached hereto as Exhibit A.

13. The correspondence demanded, *inter alia*, that "Keystone must obtain a license to the '702 patent to avoid liability for patent infringement, which could include an injunction, treble damages, and payment of MWV's attorneys fees..."

14. The letter clearly stated that "[s]hould Keystone opt not to take a license or fail to respond by [May 9, 2012], MWV will pursue all appropriate legal remedies."

15. Under the circumstances, there is a substantial controversy over infringement of the '702 patent, between Keystone and MWV, two parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

FIRST CLAIM FOR RELIEF
Declaration Of Noninfringement

16. Keystone repeats and incorporates herein the foregoing allegations in paragraphs 1-15 as if set forth in their entirety.

17. By virtue of at least the aforesaid acts of defendant MWV asserting rights under the '702 patent based on Keystone ongoing and planned activities attendant to its Accused Product, a United States Constitution Article III case or controversy has arisen such that Keystone need not risk a suit for infringement by defendant MWV based on the aforesaid acts before seeking a declaration of its legal rights.

18. By virtue of the aforementioned actions by defendant MWV, under all of the circumstances, there is a substantial, actual, and justiciable controversy between Keystone, on the one hand, MWV on the other hand, of sufficient immediacy and reality as to infringement of the '702 patent, such that a justiciable Article III controversy exists.

19. Keystone does not infringe, induce infringement of, and/or contributorily infringe, and has not infringed, induced infringement of, and/or contributorily infringed any valid and enforceable claim of the '702 patent.

20. Without declaratory relief, Keystone will be irreparably harmed and damaged.

SECOND CLAIM FOR RELIEF
Declaration Of Invalidity

21. Keystone repeats and incorporates herein the foregoing allegations in paragraphs 1-20 as if set forth in their entirety.

22. On or about March 20, 2003, Mr. Wade E. Williams-Hartman, president of Keystone, filed a patent application directed toward the Accused Product. In that patent application, Mr. Wade E. Williams-Hartman disclosed all aspects of the accused product. The patent application issued as United States Patent No. 7,188,728 on or about March 13, 2007.

23. On or before April 17, 2003, Keystone introduced the Accused Product into interstate commerce throughout the United States.

24. On or about June 27, 2005, more than one year after Keystone introduced the Accused Product into interstate commerce, MWV filed a provisional patent application, to which the '702 patent claims priority.

25. For these and additional reasons, which Keystone believes will be discovered after a reasonable opportunity for further investigation, the '702 patent is invalid and void for failure to comply with one or more sections of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103, and/or 112, and/or for failure to comply with 37 C.F.R. § 1.56.

26. An actual controversy exists between Keystone and MWV regarding whether or not each claim of the '702 patent is valid.

27. Without declaratory relief, Keystone will be irreparably harmed and damaged.

28. Keystone is entitled to a judgment declaring that each claim of the '702 patent is invalid for failure to satisfy one or more conditions of patentability set forth in 35 U.S.C. §§ 101, 102, 103, and/or 112.

THIRD CLAIM FOR RELIEF
Declaration Of Unenforceability

29. Keystone repeats and incorporates herein the foregoing allegations in paragraphs 1-28 as if set forth in their entirety.

30. An actual controversy exists between Keystone and MWV regarding whether or not each claim of the '702 patent is enforceable.

31. MWV has asserted, and continues to assert, the claims of the '702 patent against Keystone in an attempt to prevent Keystone from making, using, selling and/or importing

products and services that are not within the scope of the '702 patent's claims in an attempt to impermissibly extend the limited scope of exclusivity to which MWV may be entitled to under the '702 patent.

32. Keystone is entitled to a judgment declaring that each claim of the '702 patent is unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Keystone prays that the Court enter judgment against Defendant, MWV as follows:

A. A declaration that Keystone has not infringed, induced infringement of, or contributorily infringed, and does not infringe, induce infringement of, and/or contributorily infringe, any valid or enforceable claim of U.S. Patent No. 7,401,702.

B. A declaration that U.S. Patent No. 7,401,702 is invalid and void for failure to comply with one or more sections of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103, and/or 112, and/or for failure to comply with 37 C.F.R. § 1.56.

C. A declaration that this case is "exceptional" within the meaning of 35 U.S.C. § 287;

D. An award to Keystone of its costs, attorney fees, and expenses pursuant to 35 U.S.C. § 285; and

E. That Keystone be awarded such other and further relief as this Court deems proper and just.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), plaintiffs hereby demand a trial by a jury of twelve on all issues so triable.

Respectfully submitted this 4th day of May 2012,

Bakos & Kritzer

*Attorneys for the Plaintiff:
Keystone Folding Box Corporation*

By: s/ Noam J. Kritzer

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CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

Keystone Folding Box Company, by its undersigned counsel, hereby certifies pursuant to Local Civil Rule 11.2 that the matters in controversy are not the subject of any other action pending in any other court or of any other pending arbitration or administrative proceeding.

Respectfully submitted this 4th day of May 2012,

Bakos & Kritzer
Attorneys for the Plaintiff:
Keystone Folding Box Corporation

By: s/ Noam J. Kritzer

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