

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

INVISTA NORTH AMERICA S.À.R.L.,

Plaintiff,

v.

M&G USA CORPORATION and
M&G POLYMERS USA, LLC,

Defendants.

C.A. No. 1:11-cv-01007-SLR

JURY TRIAL DEMANDED

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff INVISTA North America S.à r.l., by its attorney, Fish & Richardson P.C., for its amended complaint against Defendants M&G USA Corporation and M&G Polymers USA, LLC (“M&G” or “Defendants”), alleges as follows:

The Nature of the Action

1. This is an action for infringement of United States Patent Nos., 7,943,216 (“the ’216 patent”), 7,879,930 (“the ’930 patent”), and 7,919,159 (“the ’159 patent”) (collectively, the “INVISTA PET Patents”).

The Parties

2. Plaintiff INVISTA North America S.à r.l. (“INVISTA”) is a corporation organized and existing under the laws of Luxembourg, with its corporate headquarters located at 4123 East 37th Street North, Wichita, Kansas. INVISTA is one of the world’s largest integrated producers of polymers. INVISTA is registered to do business in the State of Delaware with a

place of business at Three Little Falls Centre, 2801 Centerville Road, Wilmington, Delaware 19808.

3. On information and belief, Defendant M&G USA Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at State Route 2, Apple Grove, West Virginia 25502.

4. On information and belief, Defendant M&G Polymers USA, LLC, is a wholly owned subsidiary of M&G USA Corporation and is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 6951 Ridge Road, Sharon Center, Ohio 44274.

Jurisdiction and Venue

5. This action arises under the patent laws of the United States of America, United States Code, Title 35, Section 1, *et seq.* This Court has subject matter jurisdiction over the action under 28 U.S.C. §§ 1331 and 1338.

6. Based on the facts and causes alleged herein, this Court has personal jurisdiction over Defendants.

7. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400(b).

The Patents-in-Suit

8. The '216 patent, entitled "Method to Make Single-Layer PET Bottles with High Barrier and Improved Clarity," issued to Zhenguo Liu, Sanja Mehta, Xiaoyan Huang, and David A. Schiraldi on May 17, 2011. INVISTA, as the assignee, owns the entire right, title, and interest in the '216 patent. A copy of the '216 patent is attached to this complaint as Exhibit A.

9. The '930 patent, entitled "Colored Oxygen Scavenging Polymers," issued to Zhenguo Liu on February 1, 2011. INVISTA, as the assignee, owns the entire right, title, and interest in the '930 patent. A copy of the '930 patent is attached to this complaint as Exhibit B.

10. The '159 patent, entitled "Method to Make Single-Layer PET Bottles with High Barrier and Improved Clarity," issued to Zhenguo Liu, Sanjay Mehta, Xiaoyan Huang, and David A. Schiraldi on April 5, 2011. INVISTA, as the assignee, owns the entire right, title, and interest in the '159 patent. A copy of the '159 patent is attached to this complaint as Exhibit C.

Additional Facts Relevant to All Counts

11. On information and belief, M&G sells PET resins throughout the United States, including this judicial district. Two of these resins are M&G's PoliProtect APB and PoliProtect JB products.

12. On information and belief, M&G manufactures, sells, offers to sell, and exports PoliProtect APB and PoliProtect JB for use in the manufacture of food packaging articles.

13. On or around August 9, 2008, M&G submitted a food contact notification (FCN No. 851) with the United States Food and Drug Administration to provide for the safe use of hexanedioic acid, polymer with 1,3-benzenedimethanamine in conjunction with up to 0.015 weight percent cobalt neodecanoate as a modifier of ethylene phthalate polymers, which may be used in the manufacture of food contact containers.

14. On or around September 30, 2005, M&G submitted a food contact notification (FCN No. 546) to the United States Food and Drug Administration to provide for the safe use of 1,3-Benzenedicarboxylic acid, 5-sulfo-, monolithium salt as a modifier of poly(ethylene phthalate) polymers and copolymers, which may be used in the manufacture of soda and beer bottles.

15. On information and belief, hexanedioic acid, polymer with 1,3-benzenedimethanamine in conjunction with up to 0.015 weight percent cobalt neodecanoate as a modifier of ethylene phthalate polymers and 1,3-Benzenedicarboxylic acid, 5-sulfo-, monolithium salt as a modifier of poly(ethylene phthalate) polymers and copolymers are components in PoliProtect APB and PoliProtect JB resins and PoliProtect APB and PoliProtect JB food packaging articles.

16. On information and belief, M&G's customers make, use, sell, offer to sell and/or import PoliProtect APB and PoliProtect JB food packaging articles in the United States.

17. M&G states on the PoliProtect APB Data Sheet:

If colorants are to be used with M&G PoliProtect APB Polyester Resin please contact your M&G technical contact as some colorants have been found to be detrimental to the active portion of the oxygen barrier. Your M&G technical contact can determine if the colorant is on the list of tested colors.

18. M&G states on the PoliProtect JB Data sheet:

If colorants are to be used with M&G PoliProtect APB Polyester Resin please contact your M&G technical contact as some colorants have been found to be detrimental to the active portion of the oxygen barrier. Your M&G technical contact can determine if the colorant is on the list of tested colors.

19. On information and belief, M&G manufactures, offers for sale, and sells PoliProtect APB and PoliProtect JB resins in the United States and encourages its customers to combine colorants with the PoliProtect APB and PoliProtect JB resins.

Count I

(Direct Infringement of the '216 Patent under 35 U.S.C. § 271(a))

20. Paragraphs 1 to 19 are incorporated herein as set forth above.

21. Upon information and belief, M&G has knowledge of the '216 patent through at least its continued participation in a European Opposition of the European counterpart to the '216 patent, EP 1 663 630.

22. Defendants have been and are now infringing directly one or more claims of the '216 patent in this District and elsewhere in the United States by making, using, selling, offering to sell, and/or importing PET products, including without limitation their PoliProtect APB and PoliProtect JB resins, covered by one or more claims of the '216 patent, to the injury of INVISTA. Defendants' acts of infringement have injured and damaged INVISTA.

23. Defendants' infringement of the '216 patent has been and continues to be willful.

24. Defendants' infringement has caused irreparable injury for which monetary damages are inadequate and will continue to cause irreparable injury unless and until Defendants are enjoined from further infringement by this Court.

Count II

(Indirect Infringement of the '216 Patent under 35 U.S.C. § 271(b) and (c))

25. Paragraphs 1 to 24 are incorporated herein as set forth above.

26. Upon information and belief, M&G has knowledge of the '216 patent through at least its continued participation in a European Opposition of the European counterpart to the '216 patent, EP 1 663 630.

27. Defendants have been and are now infringing by contributing to or inducing their customers to make, use, sell, offer to sell, and/or import, in this District and elsewhere in the United States, PET products, including without limitation their PoliProtect APB and PoliProtect JB resins and PoliProtect APB and PoliProtect JB food packaging articles, covered by one or more claims of the '216 patent, all to the injury of INVISTA. The PoliProtect APB and

PoliProtect JB resins have no substantial non-infringing use and are specially designated to work with the patented invention. Defendants' acts of infringement were done with knowledge of the INVISTA PET patents and with the intent to encourage infringement. Defendants' acts of infringement have injured and damaged INVISTA.

28. Defendants' infringement of the '216 patent has been and continues to be willful.

29. Defendants' infringement has caused irreparable injury for which monetary damages are inadequate and will continue to cause irreparable injury unless and until Defendants are enjoined from further infringement by this Court.

Count III

(Indirect Infringement of the '930 Patent under 35 U.S.C § 271(b) and (f))

30. Paragraphs 1 to 29 are incorporated herein as set forth above.

31. Upon information and belief, M&G has knowledge of the '930 patent through at least its continued participation in a European Opposition of the European counterpart to the '930 patent, EP 1 778 791. COBARR S.p.A. is the opponent in the opposition of EP 1 778 791. EP 1 778 791 was issued from WO 2005 US 29297, which was also the application from which the '930 patent issued. Upon information and belief, COBARR S.p.A. is a wholly owned subsidiary of M&G Finanziaria S.r.l., which is also the parent of M&G.

32. Defendants have been and are now infringing by inducing their customers to make, use, sell, offer to sell, and/or import, in this District and elsewhere in the United States, PET products, including without limitation, PoliProtect APB and PoliProtect JB resins with colorants, as covered by one or more of the claims of the '930 patent, all to the injury of INVISTA. Defendants' acts of infringement have injured and damaged INVISTA.

33. Defendants have been and are now infringing by inducement one or more claims of the '930 patent in this District and elsewhere by supplying or causing to be supplied or exporting all or a substantial portion of the components of the invention covered by one or more claims of the '930 patent, including without limitation their PoliProtect APB and PoliProtect JB resins, and by inducing the combination of such components outside of the United States, all to the injury of INVISTA. Defendants' acts of infringement were done with knowledge of the INVISTA PET patents and with the intent to encourage infringement. Defendants' acts of infringement have injured and damaged INVISTA.

34. Defendants' infringement of the '930 patent has been and continues to be willful.

35. Defendants' infringement has caused irreparable injury to INVISTA for which monetary damages are inadequate and will continue to cause irreparable injury unless and until Defendants are enjoined from further infringement by this Court.

Count IV

(Direct Infringement of the '159 Patent under 35 U.S.C. § 271(a))

36. Paragraphs 1 to 35 are incorporated herein as set forth above.

37. Upon information and belief, M&G has knowledge of the '159 patent through at least its continued participation in a European Opposition of the European counterpart to the '159 patent, EP 1 663 630.

38. Defendants have been and are now infringing directly one or more claims of the '159 patent in this District and elsewhere in the United States by making, using, selling, offering to sell, and/or importing PET products, including without limitation their PoliProtect APB and PoliProtect JB resins, covered by one or more claims of the '159 patent, to the injury of INVISTA. Defendants' acts of infringement have injured and damaged INVISTA.

39. Defendants' infringement of the '159 patent has been and continues to be willful.

40. Defendants' infringement has caused irreparable injury for which monetary damages are inadequate and will continue to cause irreparable injury unless and until Defendants are enjoined from further infringement by this Court.

Count V

(Indirect Infringement of the '159 Patent under 35 U.S.C. § 271(b) and (c))

41. Paragraphs 1 to 40 are incorporated herein as set forth above.

42. Upon information and belief, M&G has knowledge of the '159 patent through at least its continued participation in a European Opposition of the European counterpart to the '159 patent, EP 1 663 630.

43. Defendants have been and are now infringing by contributing to or inducing their customers to make, use, sell, offer to sell, and/or import, in this District and elsewhere in the United States, PET products, including without limitation their PoliProtect APB and PoliProtect JB resins and PoliProtect APB and PoliProtect JB food packaging articles, covered by one or more claims of the '159 patent, all to the injury of INVISTA. The PoliProtect APB and PoliProtect JB resins have no substantial non-infringing use and are specially designated to work with the patented invention. Defendants' acts of infringement were done with knowledge of the INVISTA PET patents and with the intent to encourage infringement. Defendants' acts of infringement have injured and damaged INVISTA.

44. Defendants' infringement of the '159 patent has been and continues to be willful.

45. Defendants' infringement has caused irreparable injury for which monetary damages are inadequate and will continue to cause irreparable injury unless and until Defendants are enjoined from further infringement by this Court.

Prayer for Relief

WHEREFORE, Plaintiffs request the following relief:

- a. Judgment that Defendants infringe the '216 patent;
- b. Judgment that Defendants infringe the '930 patent;
- c. Judgment that Defendants infringe the '159 patent;
- d. An injunction permanently enjoining and restraining Defendants, and their successors, assigns, officers, agents, servants, employees, attorneys, and persons in active concert or participation with them, including any affiliated entities, during the term of the patents-in-suit (the '216 patent, the '930 patent, and the '159 patent), from infringing and from inducing, contributing to, or otherwise causing the infringement of the patents-in-suit by making, using, selling, or offering to sell in the United States, importing into the United States or exporting out of the United States any products that infringe any claims of the patents-in-suit, including the PoliProtect APB and PoliProtect JB resins and food packaging articles, or by supplying or causing to be supplied any products that induce or contribute to the same by others, including third parties outside of the United States.
- e. That judgment be entered against Defendants for money damages sufficient to compensate INVISTA for Defendants' infringement of the '216 patent, the '930 patent, and the '159 patent in an amount to be determined at trial, including lost profits;
- f. That any such money judgment be trebled as a result of the willful nature of Defendants' infringement;
- g. That this Court declare this case an exceptional case pursuant to 35 U.S.C. § 285;
- h. For an accounting for any infringing sales not presented at trial and an award by the Court of additional damages for any such infringing sales; and

i. That this Court award INVISTA costs and attorneys' fees and such other relief as is just.

JURY DEMAND

INVISTA demands trial by jury.

Dated: November 10, 2011

FISH & RICHARDSON P.C.

By: /s/ A. Martina Hufnal

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