

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

UNISTAR PLASTICS, LLC
Plaintiff

v.

NEW YORK PACKAGING, II, LLC
Defendant

CASE NO.:

SECTION

JUDGE:

MAGISTRATE:

COMPLAINT

Plaintiff, Unistar Plastics, L.L.C. (“UNISTAR”), by its attorneys, for its Complaint against Defendant New York Packaging, II, L.L.C. (“NYP”) alleges as follows:

NATURE OF ACTION

1. This is an action for a declaratory judgment that Plaintiff UNISTAR does not infringe any valid claim of United States Patent No. 10,513,078 (“the ‘078 Patent”) and a declaratory judgment that the claims of ‘078 Patent are invalid. This action relates to a method for manufacturing a headerless produce bag with increased adhesion.

PARTIES

2. UNISTAR is a limited liability company organized and existing under the laws of the State of Louisiana, having a principal place of business at 5821 Citrus Boulevard, Suite B, Harahan Louisiana 70123.

3. NYP is a limited liability company organized and existing under the laws of the State of New York, having a principal place of business at 135 Fulton Avenue, New Hyde Park, New York 11040.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This action arises under the patent laws of the United States, 35 U.S.C. §101, *et seq.*, and UNISTAR brings this action under 28 U.S.C. §§2201 and 2202 to obtain a declaration of non-infringement and invalidity of the ‘078 Patent.

6. The Court has personal jurisdiction over NYP at least because it directs business activities towards and conducts substantial business within Louisiana and this District.

7. Venue is properly within this District in accordance with 28 U.S.C. § 1391 (b) and (c) and § 1400 (b) this Court.

FACTS AND BACKGROUND

8. On October 1, 2015, inventor Jeffrey D. Rabiea filed an application with the United States Patent and Trademark Office (“USPTO”) seeking a utility patent for an invention entitled “Method of Manufacturing a Headerless Produce Bags with Increased Adhesion.” The application was assigned U.S. App. No. 14/872,871 (the “‘871 Application”).

9. Upon information and belief, the ‘871 Application and all rights therein were assigned to NYP on October 1, 2015.

10. On December 24, 2019, the ‘871 Application matured into the ‘078 Patent. A copy of the ‘078 Patent is attached as Exhibit A and incorporated herein.

11. On June 28, 2022, NYP sent a letter to UNISTAR alleging infringement of the ‘078 Patent by making and selling plastic produce bags under the name “fruits & veggies more matters” (hereinafter, the “Accused Products”). A copy of the June 28, 2022 letter (the “Cease and Desist Letter”) is attached as Exhibit B.

12. In the Cease and Desist Letter, NYP demands that UNISTAR “remove all product from the market, including recall of product already sold and distributed, as well as any racks and accessories associated with the infringing product.”

13. After receiving the Cease and Desist Letter, UNISTAR learned that NYP has asserted the same allegations of infringement against UNISTAR’s customers in an attempt to divert business from UNISTAR to NYP, but the ‘078 Patent only covers a *method* of manufacturing a headerless plastic bag and not the bag itself. There is no reason for NYP to be contacting Unistar’s customers since they are not manufacturers of the bag, and therefore, could not be practicing the method covered by the patent.

14. In order for there to be a plausible infringement claim, a person must practice each and every step included in the method covered by a claim in the ‘078 Patent. On July 7, 2022, counsel for UNISTAR responded to NYP’s Cease and Desist Letter to emphasize that UNISTAR’s manufacturing method is vastly different from the manufacturing method claimed and covered by the ‘078 Patent. Specifically, UNISTAR advised NYP that several limitations included in the two independent claims of the ‘078 Patent are not practiced by UNISTAR, and thus there is no basis for infringement. A copy of UNISTAR’s response letter is attached as Exhibit C.

15. Moreover, even if NYP could demonstrate that UNISTAR’s manufacturing method is covered by the ‘078 Patent, UNISTAR has been publicly manufacturing the Accused Products according to the same method well before the October 1, 2015 filing date of the ‘078 Patent. Accordingly, UNISTAR’s method would qualify as prior art that would invalidate the ‘078 Patent.

16. Based on the foregoing, UNISTAR demanded NYP refrain from making any further claims or representations that that the bags sold by UNISTAR and its customers infringe the '078 Patent.

17. On September 9, 2022, without any notice, NYP filed a lawsuit against UNISTAR in the United States District Court for the District of Columbia (Case No. 22-cv-02741) alleging infringement of the '078 Patent (hereinafter, the "DC Lawsuit"). Because UNISTAR is a Louisiana limited liability company, and UNISTAR does not maintain an office or physical presence in the District of Columbia, the lawsuit was filed in an improper venue under 28 U.S.C. § 1400.

18. NYP has yet to serve UNISTAR with the complaint filed in the DC Lawsuit.

19. Upon information and belief, the actions taken by NYP, including filing the DC Lawsuit was for an improper purpose, designed to harass and cause hardship to UNISTAR's business.

20. Despite not being served, on September 19, 2022, counsel for UNISTAR contacted counsel for NYP to discuss the DC Lawsuit and transferring the case to this district. Despite multiple attempts, counsel for NYP has never responded.

21. By virtue of the allegations in the Cease and Desist Letter, the improperly filed DC Lawsuit and the allegations therein, a substantial, actual, and continuing controversy exists between UNISTAR and NYP as to whether the '078 Patent is invalid and not infringed by UNISTAR.

**COUNTERCLAIM 1:
NON-INFRINGEMENT OF U.S. PATENT NO. No. 10,513,078**

22. UNISTAR refers to and incorporates by reference Paragraphs 1-21 as though fully set forth herein.

23. UNISTAR has not and does not directly or indirectly infringe, either willfully or otherwise, any valid and enforceable claim of the '078 Patent, either literally or by application of the doctrine of equivalents.

24. UNISTAR is entitled to a declaratory judgment that it does not infringe any asserted claim of the '078 Patent.

25. On information and belief, prior to sending the Cease and Desist Letter and filing the DC Lawsuit, NYP knew, or should have known, that no valid and enforceable claim of the '078 Patent has been infringed by UNISTAR, and this cause of action presents exceptional circumstances within the meaning of 35 U.S.C. § 285, and UNISTAR is thus entitled to an award of its reasonable attorneys' fees.

**COUNTERCLAIM 2:
INVALIDITY OF U.S. PATENT NO. No. 10,513,078**

26. UNISTAR refers to and incorporates by reference Paragraphs 1-25 as though fully set forth herein.

27. One or more claims of the '078 Patent are invalid for failing to satisfy one or more of the requirements of Title 35 of the United States Code, including, but not limited to the conditions of patentability set forth in 35 U.S.C. §§ 101, 102, 103, and/or 112.

28. UNISTAR is entitled to a declaratory judgment that one or more of the claims of the '078 Patent are invalid.

29. On information and belief, prior to sending the Cease and Desist Letter and filing the DC Lawsuit, NYP knew, or should have known, that the claims of the '078 Patent are invalid, and this cause of action presents exceptional circumstances within the meaning of 35 U.S.C. § 285, and UNISTAR is thus entitled to an award of its reasonable attorneys' fees.

DEMAND FOR JURY TRIAL

30. UNISTAR requests a trial by jury on all the issues so triable, pursuant to Fed. R. Civ. P. 38.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing allegations, UNISTAR prays that the Court enter the following judgements and relief in favor of UNISTAR and against NYP:

- A. a declaration that UNISTAR does not infringe and has not infringed, under any theory of infringement, including directly (whether individually or jointly) or indirectly (whether contributorily or by inducement), any valid, enforcement claim of the '078 Patent;
- B. a declaration that the claims of the '078 Patent are invalid under Title 35 of the United States Code for failing to satisfy the requirements of, without limitation, 35 U.S.C. §§ 101, 102, 103, and/or 112;
- C. a permanent injunction restraining NYP, and its respective officers, agents, servants, employees, attorneys, and any other persons acting on their behalf or in concert with them, from charging or threatening, orally or in writing, that UNISTAR has infringed the '078 Patent under any subsection of 35 U.S.C. § 271; and
- D. an award to UNISTAR of its reasonable attorneys' fees, costs, and all interest (including without limitation any attorneys' fees awards based upon 35 U.S.C. §285) and any such other and further relief as the Court finds just and proper.

Respectfully submitted this the 25th day of October, 2022.

**INTELLECTUAL PROPERTY
CONSULTING, L.L.C.**

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