

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

SINGLE USE SUPPORT GMBH,	)	
	)	
Plaintiff,	)	
	)	No. _____
v.	)	
	)	
ENTEGRIS, INC.,	)	
	)	<b>Jury Trial Demanded</b>
Defendant.	)	
	)	
	)	
	)	
	)	

**COMPLAINT**

This is a complaint for infringement of U.S. Patent No. 11,207,239, misappropriation of trade secrets, and breach of contract. Plaintiff Single Use Support GmbH (“SUS”) brings this action against Defendant Entegris, Inc., (“Entegris”) and states as follows.

**PARTIES**

1. Plaintiff SUS is an Austrian corporation with a principal place of business at Endach 36, 6330 Kufstein, Austria. SUS is the owner by assignment of the patent-in-suit, U.S. Patent No. 11,207,239.
  
2. Defendant Entegris is a Delaware corporation having its headquarters at 129 Concord Road, Billerica, Massachusetts 01821.

3. Entegris maintains at least three regular and established places of business in Texas, including two in the Western District of Texas. Entegris's Texas businesses are located at 706 Houston Clinton Drive, Burnet, Texas 78611; 300 Old Greenwood Road, Decatur, Texas 76234; and 700 Jeffrey Way, Suite 400, Round Rock, Texas 78664.<sup>1</sup>

### **JURISDICTION AND VENUE**

4. Plaintiff here asserts claims arising under the Patent Act, 35 U.S.C. § 271 *et seq.*, and the Defend Trade Secrets Act of 2016 (“DTSA”), 18 U.S.C. § 1836 *et seq.* This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Plaintiff also asserts claims arising under the Delaware Uniform Trade Secrets Act (“DUTSA”), 6 Del. Code § 2001 *et seq.*, and/or Texas Uniform Trade Secrets Act (“TUTSA”), Tex. Civ. Prac. & Rem. Code § 134A.001 *et seq.*, as well as breach of contract claims arising under Delaware and/or Texas state law. This Court has supplemental jurisdiction over these claims pursuant to 28 U.S.C. § 1367(a), because these claims share a common nucleus of operative facts with the claims arising under the Patent Act and the DTSA such that all claims in this action form part of the same case or controversy.

6. This Court has personal jurisdiction over Defendant. Entegris is registered to conduct business in Texas and maintains at least three places of business in Texas, two of which are located in the Western District of Texas.

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<sup>1</sup> <https://www.entegris.com/en/home/about-us/locations.html>

7. Venue is proper in this District under 28 U.S.C. § 1391 and 1400(b). Entegris is registered to conduct business in Texas and maintains at least three regular and established places of business in Texas, two of which are located in this District.

### **BACKGROUND FACTS**

8. SUS provides innovative fluid management solutions for single-use technologies used in the pharmaceutical industry. SUS helps its clients reduce product loss of biopharmaceutical liquids by providing a variety of products, including Robust Storage and Shipping (RoSS®) shells that protect single-use bags during transit.

9. The RoSS® Shell was designed by SUS for use with single-use bags. The RoSS® Shell can be—and has been—customized for use with a variety of different single-use bags from various manufacturers.

10. The RoSS® Shell is a sturdy container used for shipping single-use bags that contain frozen pharmaceutical fluids. The RoSS® Shell includes a polyurethane (“PU”) liner with a cutout portion for receiving and securely shipping a single-use bag of fluid. In practice the fluid bag is placed in the RoSS® Shell and then rapidly frozen, which increases the volume of the bag by approximately 8%. As the volume of the bag expands during freezing, the PU liner is compressed without deforming or damaging the RoSS® Shell.

11. The RoSS® Shell solved a persistent problem in the pharmaceutical industry whereby shipping containers were frequently damaged by pharmaceutical products due to expansion of fluids in the freezing process.

12. On December 28, 2021, the U.S. Patent Office issued U.S. Patent 11,207,239 (“The 239 patent”), entitled “Housing for a Flexible Container,” to SUS, as assignee from the inventor. SUS is the sole owner of the ’239 patent. (Ex. 1.)

13. Entegris is a customer of SUS that makes and sells, *inter alia*, single-use bags for the storage and shipment of pharmaceutical fluids. Entegris markets its single-use bag as the Aramus™ bag.

14. SUS and Entegris entered into a business relationship in 2017, when Entegris expressed interest in having SUS develop a RoSS® Shell customized for the Entegris Aramus™ bag.

15. On August 15, 2017, SUS and Entegris entered into a Mutual Non-Disclosure Agreement that required each party not to disclose the other’s confidential information or use the other’s confidential information outside of the agreement’s stated purposes of “(i) evaluating whether to engage in a business arrangement between the Parties relating to their respective businesses, and (ii) if the Parties agree to enter into such a relationship, then to further develop and facilitate such an arrangement.” (Ex. 2.)

16. In July 2019, Entegris ordered development and validation of the RoSS® system for use with the Aramus™ bag. Following the order from Entegris, SUS developed and validated a RoSS® Shell for use with Aramus™ bags.

17. On January 10, 2020, SUS entered into a supply agreement with Entegris under which SUS agreed to supply RoSS® Shells to Entegris that were suitable for use with the Aramus™ bag.

18. On January 22, 2020, SUS and Entegris entered into a second Mutual Non-Disclosure Agreement. In addition to requiring each party to keep the other party's information confidential, this agreement prohibited a party receiving confidential information from "analyz[ing], reverse-engineer[ing] or permit[ing] a third party to analyze or reverse-engineer any such materials." (Ex. 3.)

19. The RoSS® Shell adapted for the Entegris Aramus™ bag was introduced to the market in 2020. Following its introduction to the market, Moderna became the primary customer for the Aramus™-adapted RoSS® Shell.

20. In 2020, in response to a request from Moderna, SUS conducted validation tests for a combined product that included a RoSS® Shell and a larger-volume Aramus™ bag. This development and validation work was described in SUS documentation that was provided to Entegris under the protection of the non-disclosure agreements between SUS and Entegris (the "NDAs").

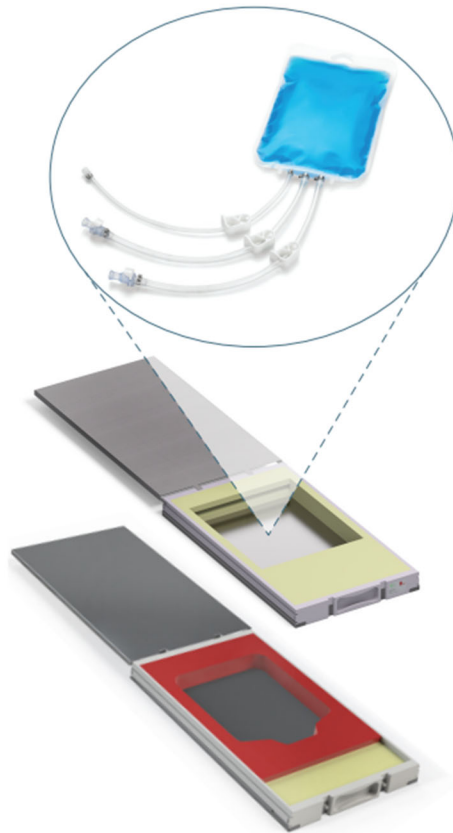
21. During 2021 to 2022, SUS's sales of RoSS® Shells to Entegris plummeted to less than 15% of the level that had been reached at the peak of the relationship. In late 2022, in response to an inquiry from SUS, Entegris announced that it would be marketing its own freezing shell instead of the SUS RoSS® Shell in the future. (Ex. 4.) The Entegris website includes product information for its new Freezing Shell product showing that it is designed for the higher volumes requested by Moderna. (*Id.*)

22. The Entegris website currently advertises its Freezing Shells as "available as beta-release products for sampling and advanced application testing ahead of

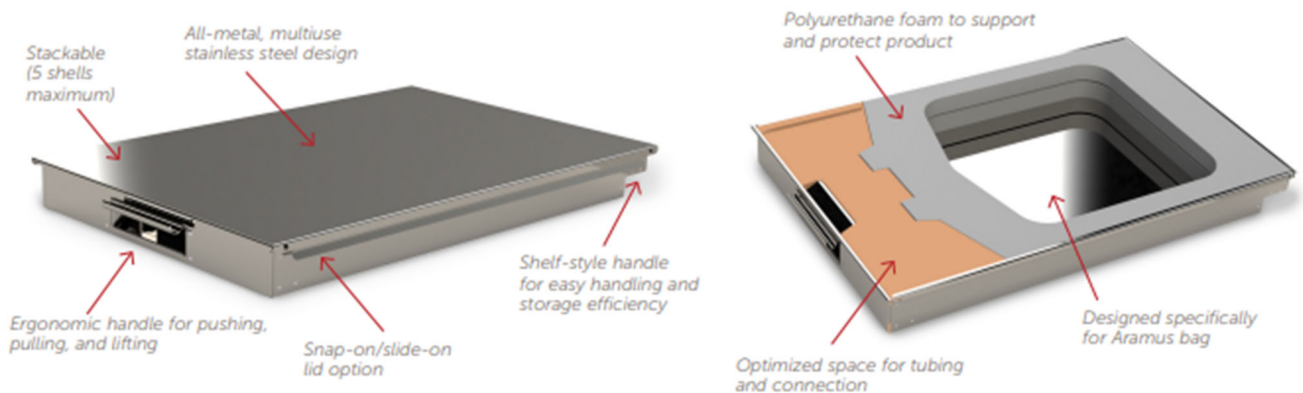
commercial launch in 2023.” (*Id.*) On information and belief, Entegris has provided its Freezing Shells to customers for use in the United States, including in this district.

23. On information and belief, Entegris designed its freezing shell using SUS’s Trade Secrets, in breach of the NDAs it signed with SUS.

24. The Entegris website still includes a product description, dated in 2021, for the RoSS® Shell developed by SUS for use with Entegris Aramus™ bags. (Ex. 5) Entegris describes this Freezing Shell as a “flexible, disposable containment solution [] for single-use biopharmaceutical applications” having “stainless steel top and bottom construction” and “[s]oft, 3D foam inlays.” (*Id.*) The following photograph on that webpage depicts the open Freezing Shell with foam inlays that include cutouts for receiving the single-use bags. (*Id.*)



25. In comparison to the RoSS® Shell, the new Entegris Freezing Shell appears to include all the same features. In a 2022 advertisement on its website, Entegris describes the Freezing Shell as having “[a]ll-metal, multiuse stainless-steel construction” and “[p]olyurethane foam to support and protect [the] product.” (Ex. 4.) The main difference between the Entegris and RoSS® Shells is that the Entegris Shell includes metal sides while the RoSS® Shell does not. The following photo of the 2022 Entegris Freezing Shell on the website is strikingly similar to the RoSS® design. (*Id.*)



### COUNT I

#### **Claim for Patent Infringement of U.S. Patent No. 11,207,239**

26. The allegations of paragraphs 1-26 are re-alleged as if fully set forth herein.

27. SUS is the owner of U.S. Patent No. 11,207,239 (the “’239 patent”). The ’239 patent, entitled “Housing for a Flexible Container,” was duly and legally issued on December 28, 2021. A true and correct copy of the ’239 patent is attached as Exhibit 6.

28. On information and belief, Entegris has directly infringed and continues to directly infringe one or more claims of the ’239 patent, including at least claim 1, in violation of 35 U.S.C. § 271(a) by making, using, offering to sell, selling, and importing

(directly or through intermediaries), in this District and elsewhere in the United States, the Entegris Freezing Shells.

29. Entegris's Freezing Shells are described in a marketing brochure posted on its website. A true and correct copy of this brochure, downloaded from Entegris's website, is attached hereto as Exhibit 5 ("Entegris 2022 Brochure").

30. Claim 1 of the '239 patent claims an arrangement comprising:

(a) a housing; and

(b) a flexible container,

wherein:

(c) the flexible container is arranged in the housing and filled with a liquid which occurs in a pharmaceutical production process;

(d) the housing is at least partially lined with an elastic foam configured to completely compensate for an increase in volume of the flexible container that occurs upon freezing; and

(e) the housing comprises cover layers made of metal.

31. As shown in the Entegris 2022 Brochure, the Entegris Freezing Shell meets all limitations of the claims of the '239 patent, including at least claim 1.

32. The Entegris Freezing Shell meets element (a) of claim 1. The Entegris 2022 Brochure depicts a metal shell of a completely enclosed design that serves as a "housing" according to claim 1 of the '239 patent. (Ex. 4.)

33. The Entegris Freezing Shell meets element (b) of claim 1. The Entegris 2022 Brochure describes the use of the Entegris Freezing Shell in combination with the



Entegris Aramus™ bags, which are single-use bags used in the pharmaceutical space. The Entegris Aramus™ bag satisfies element (b) of claim 1 as it is a “flexible container” according to claim 1 of the ’239 patent. (Ex. 4.)

34. The Entegris Freezing Shell meets element (c) of claim 1. The Entegris 2022 Brochure shows that the Entegris Freezing Shell is designed specifically for an Aramus™ bag and depicts a cavity within the Freezing Shell (housing) for receiving the Aramus™ bag. (Ex. 4.) The Entegris 2022 Brochure further explains that the Entegris Freezing Shell is used for “[b]ulk drug freezing, storage, and shipment” and references the freezing of “high-value process fluids,” indicating that the referenced “fluids” in the Aramus™ bags are liquids that are then frozen within the Entegris Freezing Shells. (*Id.*)

35. The Entegris Freezing Shell meets element (d) of claim 1. The Entegris 2022 Brochure shows that the Entegris Freezing Shell is lined with polyurethane foam. (Ex. 4.) Polyurethane foam is known to a person of ordinary skill in the art to be an elastic foam that can compress when pressure is applied. The Entegris 2022 Brochure shows that the polyurethane foam is “designed specifically” to fit the Aramus™ bag, such that the Aramus™ bag will fill the volume of the cavity within the Freezing Shell and the polyurethane foam liner can condense to account for the increase in volume upon freezing. (*Id.*)

36. The Entegris Freezing Shell meets element (e) of claim 1. The Entegris 2022 Brochure specifies that the shell is an “all-metal, multiuse stainless steel design” and depicts metal top and bottom plates in addition to metal sides. (Ex. 4.)

37. On information and belief, Entegris has also indirectly infringed and continues to indirectly infringe one or more claims of the '239 patent, including at least claim 1, in violation of 35 U.S.C. § 271(b).

38. On information and belief, Entegris has induced infringement and continues to induce infringement of one or more claims of the '239 patent, including at least claim 1, by, among other things, actively and successfully encouraging, instructing, enabling, and otherwise causing end users and/or customers to use its Freezing Shells in a manner that infringes the '239 patent.

39. On information and belief, Entegris provides customers with its Freezing Shells, along with instructions for use that, when followed in an intended manner and in normal use, Entegris knows infringes the '239 patent.

40. On information and belief, Entegris has contributorily infringed and continues to contributorily infringe one or more claims of the '239 patent, including at least claim 1, in violation of 35 U.S.C. § 271(c).

41. On information and belief, Entegris has contributorily infringed and continues to contributorily infringe one or more claims of the '239 patent, including at least claim 1, by specifically designing its Freezing Shells to be used in a manner as claimed in the '239 patent. The Freezing Shells are a material component of the patented invention, specifically designed to be used according to the claims of the '239 patent, and especially made and adapted for use in a manner that infringes the '239 patent. The Freezing Shells are not staple articles of commerce and they do not have substantial uses that do not infringe the '239 patent.

42. Upon information and belief, Entegris has knowledge of the '239 patent. SUS notes on its website that its RoSS® Shells are patented. Prior to the grant of the '239 patent, SUS informed Entegris in writing of the existence of an Austrian patent related to the '239 patent and told Entegris that a PCT patent application designating the United States was then-pending. SUS later also verbally told Entegris of its patent rights relating to the RoSS® Shell.

43. Entegris did not develop its Freezing Shells on its own, but instead copied SUS's RoSS® Shells using SUS's confidential information. Entegris has been willful and deliberate in its infringement because, on information and belief, Entegris has known of the '239 patent and knew or should have known of its infringement but acted despite and objectively high likelihood that such acts would infringe the '239 patent. Entegris has willfully infringed and continues to willfully infringe the '239 patent.

44. As the direct and proximate result of Entegris's conduct, SUS has suffered and, if Entegris is not enjoined, will continue to suffer severe competitive harm, irreparable injury, and significant damages in an amount to be proven at trial. Because SUS's remedy at law is inadequate, SUS seeks, in addition to damages, injunctive relief. SUS operates in a competitive market and will continue suffering irreparable harm absent injunctive relief.

**COUNT II**  
**Misappropriation Under and Violation of Defend Trade Secrets Act, 18 U.S.C. § 1836**

45. The allegations of paragraphs 1-45 are re-alleged as if fully set forth herein.

46. SUS is the owner of valuable trade secrets and confidential information, including but not limited to the specifications and configurations for the RoSS® Shells adapted for use with Entegris Aramus™ bags, as well as testing and validation design, processes, and data relating to the specifically-adapted RoSS® Shell (“Trade Secrets”). The Trade Secrets comprise valuable financial, business, scientific, technical, economic, and engineering information.

47. SUS has taken reasonable measures to maintain the secrecy and confidentiality of these Trade Secrets, including using NDAs with third parties, including Entegris, limiting access, and marking documents as confidential.

48. SUS’s Trade Secrets derive independent economic value, actual and potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

49. SUS’s Trade Secrets were disclosed to Entegris under agreements that required Entegris to keep SUS’s information confidential and prohibited Entegris from using SUS’s information in manners beyond those explicitly delineated in the agreements, analyzing SUS’s information, or reverse-engineering SUS’s information.

50. Entegris acquired SUS’s Trade Secrets under circumstances giving rise to a duty to maintain the secrecy of the Trade Secrets and to limit the use of the Trade Secrets.

51. On information and belief, Entegris used and disclosed SUS’s Trade Secrets in the development of its Freezing Shells. Such use and disclosure of SUS’s

Trade Secrets is prohibited by the non-disclosure agreements entered into by SUS and Entegris.

52. Entegris's use of SUS's Trade Secrets in developing its own Freezing Shells constitutes misappropriation of SUS'S Trade Secrets.

53. On information and belief, Entegris is making, using, selling, and offering for sale its Freezing Shells with the intention that they be used in interstate and/or foreign commerce. According to the Entegris 2022 Brochure, Entegris Freezing Shells are intended to be used for shipment and cold-chain transport. (Ex. 4.) On information and belief, Entegris's Freezing Shells have been used and continue to be used for the shipment and transport of materials across state lines.

54. Entegris's misappropriation of SUS's Trade Secrets was willful and malicious.

55. As a result of the misappropriation alleged herein, SUS has been damaged in an amount to be determined at trial.

### **COUNT III**

#### **Misappropriation of Trade Secrets Under Texas Uniform Trade Secrets Act, Tex. Civ. Prac. And Rem. Code § 134A.004 *et seq* ("TUTSA") and/or Delaware Uniform Trade Secrets Act, 6 Del. C. § 2001 *et seq* ("DUTSA")**

56. The allegations of paragraphs 1-56 are re-alleged as if fully set forth herein.

57. SUS is the owner of valuable trade secrets and confidential information, as alleged above and referred to herein as Trade Secrets.

58. SUS has taken reasonable measures to maintain the secrecy and confidentiality of these Trade Secrets, including using NDAs with third parties, including Entegris, limiting access, and stamping documents as confidential.

59. SUS's Trade Secrets derive independent economic value, actual and potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

60. SUS's Trade Secrets were disclosed to Entegris under agreements that required Entegris to keep SUS's information confidential and prohibited Entegris from using SUS's information in manners beyond those explicitly delineated in the agreements, analyzing SUS's information, or reverse-engineering SUS's information.

61. Entegris acquired SUS's Trade Secrets under circumstances giving rise to a duty to maintain the secrecy of the Trade Secrets and to limit the use of the Trade Secrets.

62. On information and belief, Entegris used and disclosed SUS's Trade Secrets in the development of its Freezing Shells. Such use and disclosure of SUS's Trade Secrets is prohibited by the non-disclosure agreements entered into by SUS and Entegris.

63. Entegris's use of SUS's Trade Secrets in developing its own Freezing Shells constitutes misappropriation of SUS'S Trade Secrets.

64. Entegris's misappropriation of SUS's Trade Secrets was willful and malicious.

65. As a result of the misappropriation alleged herein, SUS has been damaged in an amount to be determined at trial.

**COUNT IV**  
**Breach of Contract (Delaware and/or Texas Law)**

66. The allegations of paragraphs 1-66 are re-alleged as if fully set forth herein.

67. As alleged above, SUS entered into valid and enforceable contracts with Entegris, referred to herein as the “NDAs.” (Exs. 2 and 3.)

68. At no time was Entegris’s performance under the NDAs excused.

69. The NDAs prohibited Entegris from disclosing SUS’s confidential information, including the Trade Secrets. The NDAs further prohibited Entegris from using SUS’s confidential information outside of the limited purposes expressed in the NDAs, analyzing SUS’s confidential information, or reverse-engineering SUS’s confidential information.

70. Entegris breached the NDAs, on information and belief, by using confidential SUS documents and information to develop its own Freezing Shells. The use of SUS’s confidential information to develop a competing product is not within the scope of permissible uses under the NDA. Entegris did not have permission from SUS to use, analyze, consult, or consider SUS’s confidential information in the development of its own Freezing Shells.

71. SUS has complied with its own obligations under the NDAs.

72. As a direct and proximate result of Entegris’s breach of the NDAs, SUS has been harmed in an amount to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFORE, SUS respectfully requests the following relief:

- A. A judgment that Entegris has infringed the '239 patent, directly and indirectly, by inducement and contributory infringement;
- B. A judgment that Entegris's patent infringement has been willful;
- C. A judgment that Entegris has misappropriated SUS's trade secrets;
- D. A judgment that Entegris has breached its non-disclosure agreements with SUS;
- E. A judgment and order requiring Entegris to pay all appropriate damages under 35 U.S.C. § 284, including pre-judgment and post-judgment interest, costs, and increased damages for Entegris's willful infringement;
- F. A judgment and order requiring Entegris to pay damages for misappropriation of trade secrets in an amount to be proven at trial, including actual loss, reasonable royalties, unjust enrichment, punitive damages, prejudgment and post-judgment interest, restitution, disgorgement, SUS's lost profits from any lost sales or revenue, and exemplary damages for willful and malicious misappropriation of SUS's trade secrets pursuant to 18 U.S. C. § 1836(b)(3)(C), 6 Del. C. § 2003(b), and Tex. Civ. Prac. And Rem. Code § 134A.004.
- G. A judgment and order that this is an exceptional case under 35 U.S.C. § 285 and awarding SUS enhanced damages and its reasonable attorney fees;



H. Preliminary and permanent injunctions against Entegris and its officers, agents, employees, attorneys, and all persons in active concert or participation with them, prohibiting infringement of the '239 patent; and

I. Preliminary and permanent injunctions against Entegris and its officers, agents, employees, attorneys, and all persons in active concert or participation with them, prohibiting disclosure of use of SUS's confidential information and enjoining the sale of any Entegris product that incorporates or was otherwise derived from SUS's confidential information;

J. Such other and further relief that this Court may deem just and equitable.

**DEMAND FOR A JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, SUS demands a trial by jury of all issues so triable.

Dated: February 24, 2023

/s/ Deron R. Dacus

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