

1100 Raymond Boulevard
Newark, NJ 07102



**U.S. Customs and
Border Protection**

AEP TRADING INC
977 57TH ST, FL G
BROOKLYN, NY 11219

DEC 05 2011

Sir/Madam

This is to advise you that the following shipment is deemed excludable from entry into the United States by Order of the U.S. International Trade Commission for violation of 337-TA- 514, an Exclusion Order:

Patent: 415,420 - 6,056,138 - 6,196,404
U.S. International Trade Commission Case No: 337-TA- 514
Article Denied Entry: Plastic Containers
Quantity: 4,779 PCS
Vessel/Airline: N/A
Bill of Lading: N/A
Date of Denial of Entry: 12/05/2011
Entry Number: NV3-00466871

You have 30 days from the date of this letter to export the subject merchandise from the United States. If the merchandise is not exported within 30 days, it will be disposed of under Customs supervision pursuant to 19 CFR § 12.39(b) (3) and (c) (5).

A copy of this notice is being furnished to the U.S. International Trade Commission. You are hereby notified that any future attempt to import such articles may result in articles being seized and forfeited.

If you have any questions or concerns, please contact Tony Kim of Team 204 at (973) 368-6120.

Sincerely,

Dharmendra Lilia
Supervisory Import Specialist

cc: U.S. International Trade Commission
U.S. Customs and Border Protection, Office of Regulations & Rulings

1100 Raymond Boulevard
Newark, NJ 07102



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Border Protection

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JAN - 6 2012

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This is to advise you that the following shipment is deemed excludable from entry into the United States by Order of the U.S. International Trade Commission for violation of 337-TA- 514, an Exclusion Order.

Patent: 415,420 - 6,056,138 - 6,196,404
U.S. International Trade Commission Case No: 337-TA- 514
Article Denied Entry: Plastic Containers
Quantity: 9,589 PCS
Vessel/Airline: N/A
Bill of Lading: N/A
Date of Denial of Entry: 01/06/2012
Entry Number: NV3- 00470139

You have 30 days from the date of this letter to export the subject merchandise from the United States. If the merchandise is not exported within 30 days, it will be disposed of under Customs supervision pursuant to 19 CFR § 12.39(b) (3) and (c) (5).

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Supervisory Import Specialist

cc: U.S. International Trade Commission
U.S. Customs and Border Protection, Office of Regulations & Rulings

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN PLASTIC FOOD
CONATINERS**

Inv. No. 337-TA-514

GENERAL EXCLUSION ORDER

The Commission has previously determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the unlawful importation and sale of certain plastic food containers that infringe the claim of U.S. Design Patent No. 415,420 ("the '420 patent"), claim 1 of U.S. Patent No. 6,056,138 ("the '138 patent"), and claim 1 of U.S. Patent No. 6,196,404 ("the '404 patent"). Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determinations on the issues of remedy, the public interest, and bonding. The Commission has determined that a general exclusion from entry for consumption is necessary to prevent circumvention of an exclusion order limited to products of named persons because there is a pattern of violation of section 337 and it is difficult to identify the source of infringing products. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of infringing plastic food containers.

The Commission has also determined that the public interest factors referenced in 19 U.S.C. §§ 1337(g) do not preclude the issuance of the general exclusion order, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the articles in question.

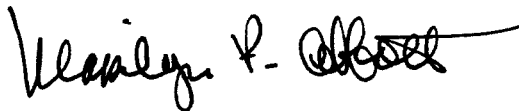
Accordingly, the Commission hereby ORDERS that:

1. Plastic food containers covered by one or more of claim 1 of the '420 patent, claim 1 of the '138 patent, or claim 1 of the '404 patent, or are excluded from entry for consumption, entry for consumption from a foreign-trade zone, and withdrawal from warehouse for consumption for the remaining term of the patents, except under license of the patent owner or as provided by law.
2. Notwithstanding paragraph 1 of this Order, the aforesaid plastic food containers are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, and withdrawal from warehouse for consumption, under bond in the amount of 100 percent of the entered value of such articles, from the day after this Order is received by the President, pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, until such time as the President notifies the Commission that he approves or disapproves this action, but no later than 60 days after the date of receipt of this Order by the President.
3. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to plastic food containers imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.
4. The Commission may modify this Order in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).
5. The Commission Secretary shall serve copies of this Order upon each party of record in this investigation and upon the

Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the Bureau of Customs and Border Protection.

6. Notice of this Order shall be published in the *Federal Register* pursuant to section 337(j)(1)(A) of the Tariff Act of 1930 as amended (19 U.S.C. § 1337(j)(1)(A)) and section 210.49(b) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.49(b)).

By order of the Commission.

A handwritten signature in black ink, appearing to read "Marilyn R. Abbott", with a long horizontal flourish extending to the right.

Marilyn R. Abbott
Secretary to the Commission

Issued: May 23, 2005

CERTAIN PLASTIC FOOD CONTAINERS

337-TA-514

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF FINAL DETERMINATION OF VIOLATION OF SECTION 337 AND ISSUANCE OF GENERAL EXCLUSION ORDER; TERMINATION OF THE INVESTIGATION** was served upon the Commission Investigative Attorney, Michael Diehl, Esq., and all parties via first class mail and air mail where necessary on May 27, 2005.



Marilyn R. Abbott/Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

ON BEHALF OF COMPLAINANT
NEWSPING INDUSTRIAL
CORPORATION:

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RESPONDENTS:

Taizhou Huasen Household Necessities, Co., Ltd.
a/k/a China Huasen Daily Expenses Co., Ltd.
No. 13,247 Lane, YinShan Road
Huaugyan, Taizhou
People's Republic of China

Jiangsu Sainty Corporation, Ltd.
98 Jian Ye Road
Nanjing, People's Republic of China



OUII 337 Investigative History



Archivist:

Investigation No.	337-TA-514
In the Matter of Certain	Plastic Food Containers
Unfair Acts in Notice:	Patent Infringement
Patent, Copyright, Trademark Nos.	U.S. Patent Nos. 6,056,138 6,196,404 D415,420
Country of Origin (Resp./Products):	China
PARTICIPANTS	
Complainant(s):	Newspring Industrial Corporation, Kearny, NJ
Respondent(s):	Taizhou Huasen Household Necessities, Co., Ltd. a/k/a China Huasen Daily Expenses Co., Ltd., Taizhou, China; Jiangsu Sainty Corporation, Ltd., Nanjing, China
ALJ:	Luckern
OUII Attorney:	Snotherly
GC Attorney:	Diehl
PROCEDURAL HISTORY	
Status before Commission:	Completed
Notice of Investigation:	69 Fed. Reg. 34691 (June 22, 2004)
Type(s) of Proceeding(s)	Violation
Current Phase of Proceeding:	terminated
Inv. Termination Date:	May 27, 2005
Published Commission Opinions:	Pub. 3969 (December 2007)
Related Court Decisions:	
Appeal Status/Result:	
DISPOSITION	
Disposition:	Violation Found; General Exclusion Order
Unfair Acts Found:	Patent
Notes Re: Disposition/Remedy:	D415,420 (October 19, 2016) 6,056,138 (May 2, 2017) 6,196,404 (March 6, 2018)

Page 6 of Exhibit A-2

Active/Expired Remedial Order:	Active
Exclusion/C&D Orders:	View Order

SCHEDULE	
Target Date:	05/23/2005 (11 months)
Violation Final ID Due Date:	02/23/2005
Beginning & Ending Dates of Evidentiary Hearing:	

[See Disclaimer](#)

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN PLASTIC FOOD
CONTAINERS

Inv. No. 337-TA-514

**COMMISSION OPINION ON VIOLATION OF SECTION 337
AND ON REMEDY, THE PUBLIC INTEREST, AND BONDING**

INTRODUCTION

This investigation is before the Commission for determination as to remedy, the public interest, and bonding. This opinion also corrects two formatting and typographical errors contained in the initial determination (“ID”), in which the presiding administrative law judge (“ALJ”) found a violation of section 337 of the Tariff Act of 1930, as amended.

BACKGROUND

By a notice published on June 22, 2004, the Commission instituted the present investigation into alleged violations of section 337 in the importation and sale of certain plastic food containers by reason of infringement of certain claims of U.S. Patent No. 6,056,138 (the “138 patent”); of U.S. Patent No. 6,196,404 (the “404 patent”); and of U.S. Design Patent No. D 415,420 (the “420 patent”). 69 *Fed. Reg.* 34691 (June 22, 2004). Plastic food containers such as those claimed by the patents in issue are used for packaging foods from food processors, restaurants, and educational and government institutions with food service programs.

On August 19, 2004, complainant Newspring Industrial Corp. (“Newspring”) moved for an order directing that respondents Jiangsu Sainty Corporation, Ltd. (“Jiangsu”) and Taizhou Huasen Household Necessities, Co., Ltd. (“Taizhou”) show cause as to why each should not be found in default for failure to respond to the complaint and notice of investigation. Newspring also requested an order finding

respondents in default if they failed to show cause. On August 27, 2004, the Commission Investigative Attorney ("IA") filed a response in support of the motion for an order to show cause, but he opposed as premature any finding that respondents were in default. On August 30, 2004, the ALJ issued Order No. 5, directing respondents to show cause no later than September 17, 2004 why they should not be held in default.

On September 9, 2004, before the ALJ ruled on the motions for default, Newspring filed motions for summary determinations that there has been a violation of section 337 and that a domestic industry has been established with respect to each of the asserted patents. Newspring sought a recommendation for the issuance of a general exclusion order.

On September 23, 2004, the IA filed a response supporting the motions with respect to most but not all issues. He supported a summary determination that the domestic industry requirement had been satisfied as to each of the patents in issue. He also supported a summary determination that Jiangsu had violated section 337 with respect to each of the patents at issue. As to Taizhou, the IA supported a summary determination of violation as to the '420 patent, but not as to the '138 and '404 patents.

On October 12, 2004, the ALJ issued an ID (Order No. 7) with respect to Newspring's motion to find respondents in default. Noting that neither respondent responded to the notice to show cause, the ALJ found the respondents in default. The Commission determined not to review the ID.¹ Although Jiangsu and Taizhou were the only named respondents in the investigation, the ID finding them in default did not terminate the investigation because complainant sought a general exclusion order. Issuance of a general exclusion order in a default investigation requires a finding of violation on the merits. 19 U.S.C. § 1337(g)(2).

On February 10, 2005, the ALJ issued the subject ID (Order No. 8), granting Newspring's motions for summary determinations with respect to most but not all issues. Consistent with the position

¹The notice of the determination not to review issued on November 23, 2004.

of the IA, the ALJ determined that a domestic industry had been established with respect to each of the asserted patents, and that Jiangsu had violated section 337 with respect to each asserted patent as well. He determined that Taizhou had violated section 337 with respect to the '420 design patent, but found that a genuine issue of fact remained as to whether the accused Taizhou products infringed the '138 and '404 utility patents. Accordingly, he denied complainant's motion as to Taizhou in part. The ALJ also issued his recommendation on remedy and bonding along with his ID. He recommended the issuance of a general exclusion order and that the bond permitting temporary importation during the Presidential review period be set at 100 percent of the entered value of the infringing imported product. No party petitioned for review of the ID.

On March 18, 2005, the Commission issued a notice of its decision to review the ID "for the limited purpose of examining possible formatting and typographical errors contained on one page of the ID." 70 *Fed. Reg.* 13206, 13206. The Commission sought comments from the parties to the investigation with respect to the issues under review and written submissions from the parties to the investigation, interested government agencies, and any other interested parties on the issues of remedy, the public interest, and bonding.

On March 28, 2005, the Commission received submissions from Newspring and the IA. No reply submissions were received.

DISCUSSION

I. LIMITED MODIFICATION OF ORDER NO. 8

As noted, the current review is limited to the text and the figure appearing on page 15 of Order No. 8. In response to the Commission's notice of review, Newspring and the IA each indicated that the widths marked "A" and "B" on Figure 1 of page 15 of the ID are identified incorrectly.² The IA noted that Figure 1 of the ID is identical to a Figure 1 appearing on (coincidentally) page 15 of Complainant

²Newspring's Comments at 10, IA's Comments at 3.

Newspring Industrial Corp.'s Memorandum of Points and Authorities in Support of Its Motion for Summary Determination Regarding a Violation of Section 337 and Remedy.³ As Newspring and the IA noted, Newspring subsequently filed a replacement for page 15 of its Memorandum, which page contained a corrected Figure 1 in which the widths "A" and "B" were re-positioned. Newspring and the IA indicated that the widths should be marked as they appear in Newspring's corrected submission.⁴ Both parties agreed also that the reference to "Figure 1 of the '138 patent" in the text of page 15 of the ID should instead be a reference to "Figure 5 of the '138 patent."⁵

Consistent with the views of Newspring and the IA, we find that the widths marked "A" and "B" on Figure 1 of page 15 of the ID are identified incorrectly. We further find that widths "A" and "B" are marked correctly in the corrected page 15 of the Newspring Memorandum. The corrected Figure 1 is attached hereto and is labeled "Corrected Figure 1." We also find that the reference to "Figure 1 of the '138 patent" appearing on page 15 of the ID should instead refer to "Figure 5 of the '138 patent." Accordingly, the Commission modifies page 15 of the ID by replacing Figure 1 with Corrected Figure 1, attached to this Opinion. It further modifies page 15 by replacing the reference to "Figure 1 of the '138 patent" with a reference to "Figure 5 of the 138 patent."

II. REMEDY

A. Statutory Background and Criteria for Issuance of a General Exclusion Order

Where a violation of section 337 has been found, the Commission must consider the issues of remedy, the public interest, and bonding. With respect to remedy, the Commission may issue a remedial order excluding the goods of the person(s) found in violation (a limited exclusion order) or, if certain

³IA's Comments at 3.

⁴Newspring's Comments at 10, IA's Comments at 3.

⁵Newspring's Comments at 10, IA's Comments at 4.

criteria are met, against all infringing goods regardless of the source (a general exclusion order).⁶

Depending on the circumstances, the Commission's authority to issue a general exclusion order may be found in section 337(d)(2) or 337(g)(2).

Section 337(d)(2) provides that:

The authority of the Commission to issue an exclusion from entry of articles shall be limited to persons determined by the Commission to be violating this section unless the Commission determines that--

- (A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or
- (B) there is a pattern of violation of this section and it is difficult to identify the source of infringing products.

19 U.S.C. § 1337(d)(2).

Section 337(g)(2) provides that:

In addition to the authority of the Commission to issue a general exclusion from entry of articles when a respondent appears to contest an investigation concerning a violation of the provisions of this section, a general exclusion from entry of articles, regardless of the source or importer of the articles, may be issued if--

- (A) no person appears to contest an investigation concerning a violation of the provisions of this section,
- (B) such a violation is established by substantial, reliable, and probative evidence, and
- (C) the requirements of subsection (d)(2) of this section are met.

19 U.S.C. § 1337(g)(2).

Read together, section 337(g)(2) supplements the authority granted to the Commission under section 337(d)(2), empowering it to issue a general exclusion order when "no person appears to contest an investigation concerning violation of this section," if certain conditions are met. Given that no respondent has appeared to contest the current investigation, the Commission's authority to issue a

⁶The Commission also has authority to issue cease and desist orders and to sanction parties for certain conduct. *See* 19 U.S.C. § 1337(f) & (h).

general exclusion order in this investigation arises under section 337(g)(2).

The Commission has noted that the criteria of section 337(d)(2), which are incorporated into section 337(g)(2), “do not differ significantly” from the factors in *Certain Airless Paint Spray Pumps and Components Thereof*, Inv. 337-TA-90, USITC Pub. 1199, 216 U.S.P.Q. 465 (USITC 1981) (“*Spray Pumps*”). *Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing Same*, Inv. No. 337-TA-372, USITC Pub. 2694 (May 1996), Comm’n Op. at 5 (“*Neodymium Magnets*”). In *Spray Pumps*, the Commission held that a complainant seeking a general exclusion order must show both (1) a widespread pattern of unauthorized use of its patented invention and (2) certain business conditions from which one might reasonably infer that foreign manufacturers other than the respondents to the investigation may attempt to enter the U.S. market with infringing articles. *Spray Pumps*, 216 U.S.P.Q. 465, 473. The Commission stated that among the evidence which might be presented to prove a “widespread pattern of unauthorized use of the patented invention” would be:

- (1) a Commission determination of unauthorized importation into the United States of infringing articles by numerous foreign manufacturers; or
- (2) the pendency of foreign infringement suits based upon foreign patents which correspond to the domestic patent in issue;
- (3) other evidence which demonstrates a history of unauthorized use of the patented invention.

Spray Pumps, 216 U.S.P.Q. 465, 473.

Among the evidence which might be presented to prove the “business conditions” referred to would be:

- (1) an established demand for the patented product in the U.S. market and conditions of the world market;
- (2) the availability of marketing and distribution networks in the United States for potential foreign manufacturers;
- (3) the cost to foreign entrepreneurs of building a facility capable of producing the patented article;

- (4) the number of foreign manufacturers whose facilities could be retooled to produce the patented articles; or
- (5) the cost to foreign manufacturers of retooling their facility to produce the patented articles.

Spray Pumps, 216 U.S.P.Q. 465, 473.

B. The ALJ's Recommended Determination

In regard to the “widespread pattern of unauthorized use” criterion of the *Spray Pumps* test, the ALJ found that both respondents have been shown to infringe the ‘420 design patent. ID at 24-25. As to the ‘138 and ‘404 utility patents, the ALJ found that the Jiangsu products infringe and that the available evidence indicates that the Taizhou products infringe as well. ID at 25. The ALJ noted also that Newspring has filed six lawsuits in federal court asserting infringement of the three patents in issue, including three actions involving imported products from China or Taiwan. He noted that, in each of the six cases, consent judgments were entered wherein defendants expressly acknowledged infringing the asserted patents. ID at 25.

With respect to the business conditions criterion of *Spray Pumps*, the ALJ noted that there is an established U.S. market for goods practicing the patents in issue, and that marketing and distribution networks are widely available in the United States. ID at 26. The ALJ also found it is difficult to determine the source of infringing goods. He noted evidence showing that foreign facilities engaged in plastic molding manufacturing can modify their operations to produce infringing containers at relatively little expense, and that molds can be created using Newspring’s own patented products. ID at 26.

Based on these representations, the ALJ found the “widespread pattern” and “business conditions” criteria to be satisfied, and he recommended that the Commission issue a general exclusion order if its finds a violation of section 337.

C. Analysis and Determination

We determine that the requirements of section 337(g)(2) for the issuance of a general exclusion order have been met here. As to the widespread pattern of unauthorized use criterion, the record indicates that unauthorized uses occurred in the importation and sale of infringing products manufactured by Jiangsu and Taizhou. ID at 8-19, 24-25. In addition, Newspring has filed six federal lawsuits asserting infringement of the patents in issue. In each of the six, consent judgments were entered wherein defendants other than Jiangsu and Taizhou expressly acknowledged their infringement of the asserted patents. ID at 25. As to the certain business conditions criterion, the record shows an established U.S. market for goods practicing the patents in issue, and the availability of U.S. marketing and distribution networks for such goods. ID at 25-26. Moreover, the ALJ found it is difficult to determine the source of infringing goods, and there is evidence that foreign manufacturers of molded plastic goods can produce infringing products at relatively little expense, including using molds created from Newspring's own products. ID at 26.

The record also indicates that the remaining factors of 337(g)(2) are satisfied. Neither respondent has filed a response to the notice of investigation, complaint, or order to show cause why they should not be found in default. Because the respondents having made no filings of any kind, it is established that no person has appeared to contest the investigation.

With respect to the sole remaining factor, the record indicates that a violation of section 337 "is established by substantial, reliable, and probative evidence." 19 U.S.C. § 1337(g)(2). We briefly review that evidence as it relates to each element of a section 337 violation.

The ALJ found that there had been importations of the accused products, based in part on shipping, customs, and sales documentation obtained from Polyte, Inc., a customer of Jiangsu and Taizhou. ID at 5-6. The record also shows that Polyte and its owner entered into a consent judgment in a federal court action, in which Polyte acknowledged that it had sold imported products obtained from

Jiangsu and Taizhou that infringed each of the patents in issue. ID at 6. In addition, because no party challenged the patents, the ALJ reasonably found that the patents in issue are not invalid or unenforceable. ID at 8.

The record also supports the ALJ's conclusions as to infringement. As to the '420 design patent, the ALJ reasonably relied on the opinion of an expert and his own review in concluding that certain Jiangsu products are of substantially the same design as the one embodied in the '420 design patent, and that the novel features of the patent are found in the accused products as well. ID at 9. The ALJ reasonably relied on photographs of the Taizhou products on the company's website in determining that the Taizhou products infringe the design patent as well. ID at 9.

As to claim 1 of both the '138 and '404 utility patents, we find no reason to disagree with the ALJ's claim construction (as clarified by the previously discussed modifications to page 15 of the ID). See ID at 11-18. With respect to infringement, the ALJ reasonably concluded that the declaration of a Newspring witness (Dr. Druin) establishes that certain Jiangsu products infringe at least claim 1 of the '138 and '404 patents. ID at 18. The ALJ found that an inspection of the physical samples in conjunction with Dr. Druin's claim charts confirms infringement by the Jiangsu products of at least claim 1 of each of the utility patents. ID at 18. The ALJ reasonably found that there remained a genuine issue of material fact as to whether the Taizhou products infringe the '138 and '404 patents.

Finally, the record supports the ALJ's finding that the domestic industry requirement is satisfied. With respect to the technical prong of the test, the ALJ found that both the Druin declaration and his own comparison of Newspring's VERSAtainer products to Dr. Druin's claim charts indicate that Newspring is practicing the patents in issue. ID at 20-21. As to the economic prong of the test, the record shows that Newspring produces the patented VERSAtainer containers at two manufacturing facilities in the United States. ID at 21.

We determine that the uncontroverted records facts relied on by the ALJ are sufficient to satisfy

the requirement that a violation be shown by evidence that is “substantial, reliable, and probative.” Accordingly, we find that all the elements of section 337(g)(2) are satisfied, and determine to issue a general exclusion order.

We issue a remedy in the form of a general exclusion order that is narrower in scope than the general exclusion orders proposed by Newspring and the IA. Consistent with the infringement findings of the ALJ in Order No. 8, which we adopt as modified, our order bars from entry for consumption plastic food containers that infringe any of claim 1 of the ‘138 patent, claim 1 of the ‘404 patent, or claim 1 of the ‘420 patent. By contrast, Newspring and the IA proposed orders applying to imported goods that infringe any of claims 1-5 of the ‘138 patent, claims 1-2 and 4-9 of the ‘404 patent, or claim 1 of the ‘420 patent.

We decline to extend the scope of relief to products as to which the ALJ has not made a finding of infringement as the proposed orders would do. Because section 337(g)(2) requires a finding of a violation, we consider the scope of relief to be limited to the scope of the violation found, and therefore limit the scope of the exclusion order to goods that infringe any of claim 1 of each respective patent in issue.⁷

III. THE PUBLIC INTEREST

In addition to the factors discussed above, the Commission’s authority to issue any exclusion order is conditioned on consideration of the public interest. 19 U.S.C. § 1337(d). Specifically, in an investigation in which no party appears to contest the investigation, the Commission may issue a general exclusion order:

only after considering the effect of such order(s) upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers, and concluding that the

⁷We note that this investigation is not decided under section 337(g)(1), which, if certain conditions are satisfied, directs the Commission to “presume the facts alleged in the complaint to be true” 19 U.S.C. § 1337(g)(1).

order(s) should still be issued in light of the aforementioned public interest factors.

Commission rule 210.16(c)(1) and (2). 19 CFR § 210.16(c)(1) and (2). The public interest analysis does not concern whether there is a public interest in issuing a remedial order, but whether issuance of such an order will adversely affect the public interest. *Certain Agricultural Vehicles*, Inv. No. 337-TA-487, Comm'n Op. at 17.

We are not aware of any evidence on the record indicating that the issuance of a general exclusion order would be contrary to the public interest. The proposed order would bar entry of infringing plastic food containers only, and would not extend to non-infringing plastic food containers or food containers made of other materials. Moreover, the record indicates that U.S. demand for food containers can be met by Newspring and U.S. manufacturers of non-infringing plastic food containers. Accordingly, we determine that the issuance of a general exclusion order will not adversely affect the public interest.

IV. BOND DURING PRESIDENTIAL REVIEW PERIOD

A. The Statute on Bonding During the Presidential Review Period

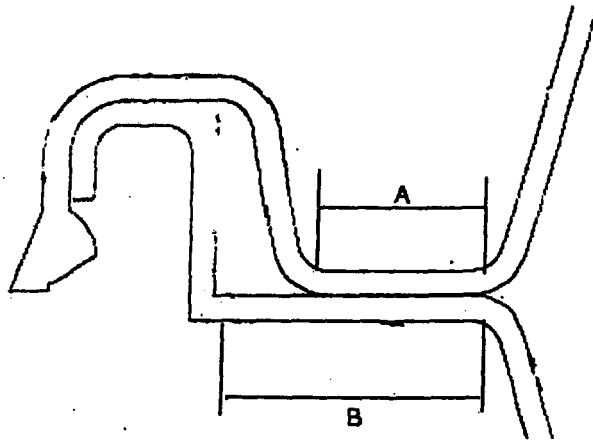
During the Presidential review period, imported articles otherwise subject to a remedial order are entitled to conditional entry under bond, pursuant to section 337(j)(3). 19 U.S.C. § 1337(j)(3). The amount of the bond is specified by the Commission and must be an amount sufficient to protect the complainant from any injury. *Id.*, 19 C.F.R. § 210.50(a)(3).

B. The ALJ's Recommended Determination

The ALJ noted that, in setting the amount of the bond during the Presidential review period, the Commission "typically has considered the differential in sales price between the patented product made by the domestic industry and the lower price of the infringing imported product."⁸ He noted also that,

⁸ID at 27 (quoting *Microsphere Adhesives, Process For Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, USITC Pub. 2949, Comm'n Op. at 24).

Corrected Figure 1

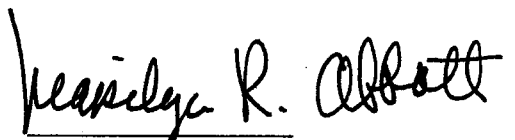


where pricing information is not available, the bond may be set at 100 percent of the entered value. ID at 27. In respect to the present investigation, the ALJ observed that there has been no discovery or participation by respondents and recommended a bond of 100 percent of the entered value of the infringing goods.

C. Analysis and Determination

As noted by the ALJ, the record lacks sufficient information to calculate the difference in price between the asserted plastic food containers and the infringing products. When the pricing information is insufficient, the Commission has set the amount of the bond at 100 percent of entered value.⁹ In accordance with the recommendation of the ALJ, we determine to set the bond at 100 percent of the entered value of infringing plastic food containers to prevent any harm to Newspring during the Presidential review period.

By order of the Commission.

A handwritten signature in black ink, reading "Marilyn R. Abbott". The signature is written in a cursive, flowing style.

Marilyn R. Abbott
Secretary to the Commission

May 23 2005

⁹See *Neodymium Magnets*, Inv. No. 337-TA-372, USITC Pub. 2694 (May 1996), Comm'n Op. at 15.

Style#12-A818



Style#32-A78



Style#38-A88



Style#32-A828



Style#28-A68



Style#16-A18



Style#32-A29



Style#24-A23





US00D415420S

United States Patent [19]
Chen

[11] **Patent Number: Des. 415,420**

[45] **Date of Patent: ** Oct. 19, 1999**

[54] **DOUBLE SEALED RIM STACKABLE CONTAINER**

3,720,365 3/1973 Unger 229/406
 3,955,710 5/1976 Comisso 229/406 X
 5,220,999 6/1993 Goulette 229/406 X

[75] **Inventor: Jeffrey Chen, Staten Island, N.Y.**

OTHER PUBLICATIONS

[73] **Assignee: Newspring Industrial Corporation, E. Newark, N.J.**

Modern Packaging, p. 318, 1967.
 Ultra Fresh Containers, p. 10, Mar. 1995.
 Tenneco Packaging, p. 20, 1996.

[**] **Term: 14 Years**

Primary Examiner—Prabhakar Deshmukh
Attorney, Agent, or Firm—Gibbons, Del Deo, Dolan, Griffinger & Vecchione

[21] **Appl. No.: 29/066,299**

[22] **Filed: Feb. 11, 1997**

[51] **LOC (6) Cl. 09-07**

[52] **U.S. Cl. D9/428; D7/629**

[58] **Field of Search D9/428, 429, 431, D9/425, 424; 206/541, 508; 229/4.5, 406, 938; 220/4.21, 4.2, 4.23, 4.24, 4.25; D7/629; D28/82**

[57] CLAIM

The ornamental design for a double sealed rim stackable container, as shown and described.

DESCRIPTION

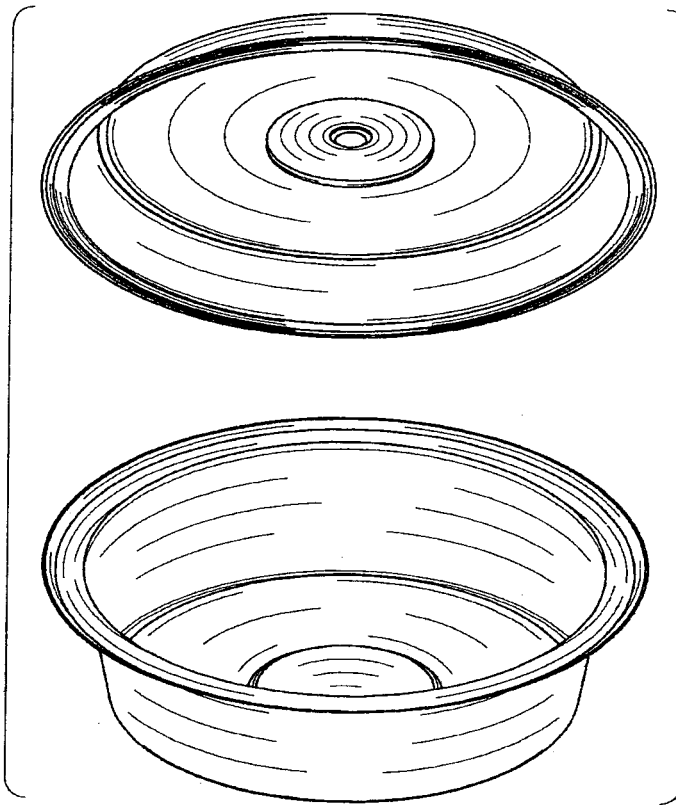
FIG. 1 is a perspective view of a double sealed rim stackable container according to the present invention including a container bottom and lid;
 FIG. 2 is a side view of a container with lid thereof;
 FIG. 3 is a top plan view of a lid thereof;
 FIG. 4 is a top plan view of a container bottom thereof;
 FIG. 5 is a side view of a lid thereof; and,
 FIG. 6 is a side view of a container bottom thereof.

[56] References Cited

U.S. PATENT DOCUMENTS

D. 335,085 4/1993 Wacker D9/428 X
 D. 357,552 4/1995 Carranza D28/82
 D. 372,862 8/1996 Flori D9/428
 D. 373,954 9/1996 Wolff D9/429
 D. 375,261 11/1996 Flori D9/428
 D. 380,124 6/1997 Kato et al. D7/629 X

1 Claim, 5 Drawing Sheets



U.S. Patent

Oct. 19, 1999

Sheet 1 of 5

Des. 415,420

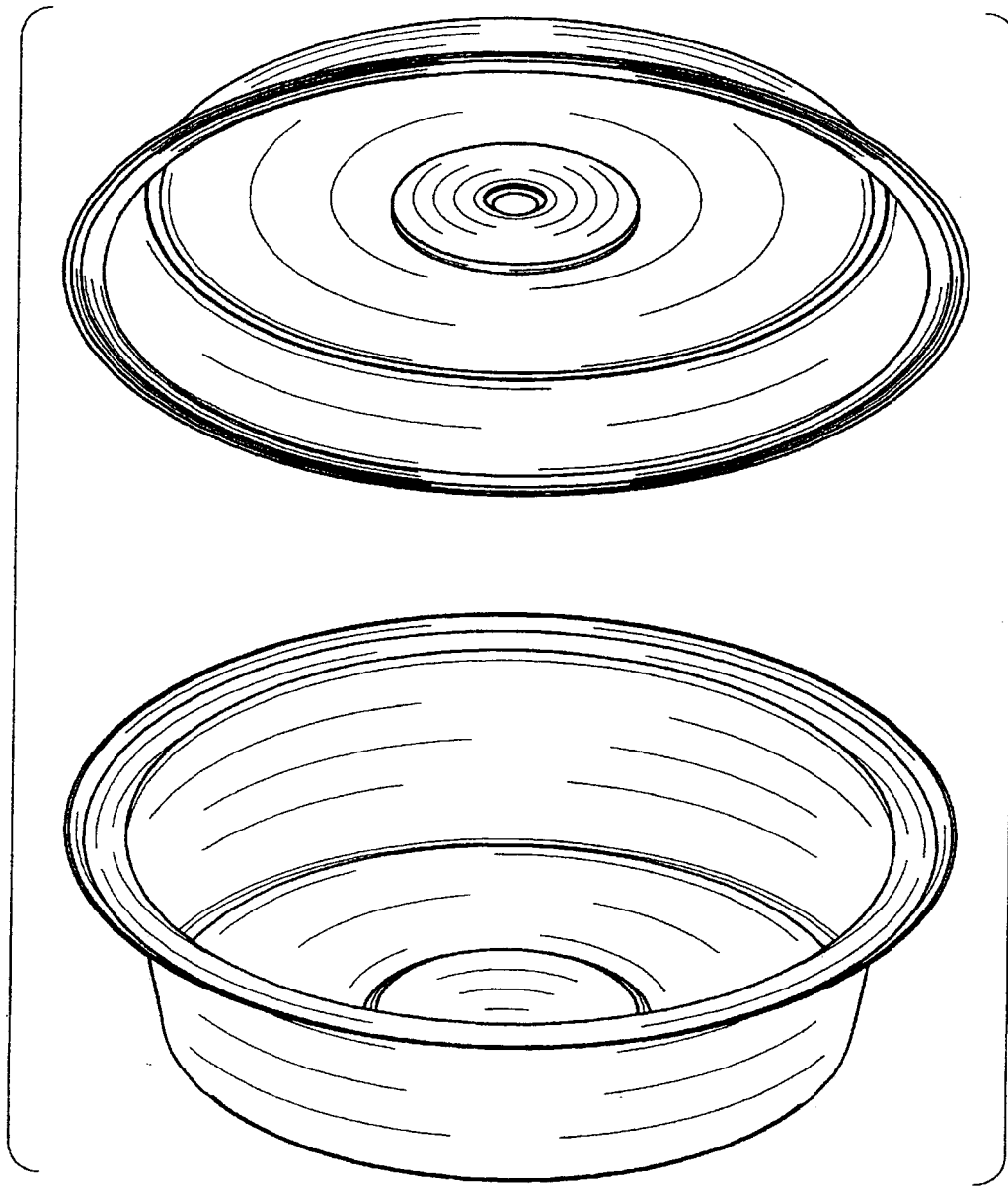


Fig. 1

U.S. Patent

Oct. 19, 1999

Sheet 2 of 5

Des. 415,420

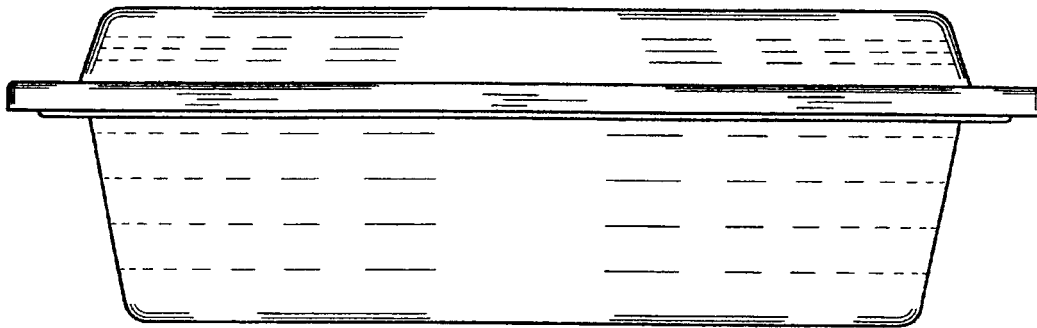


Fig. 2

U.S. Patent

Oct. 19, 1999

Sheet 3 of 5

Des. 415,420

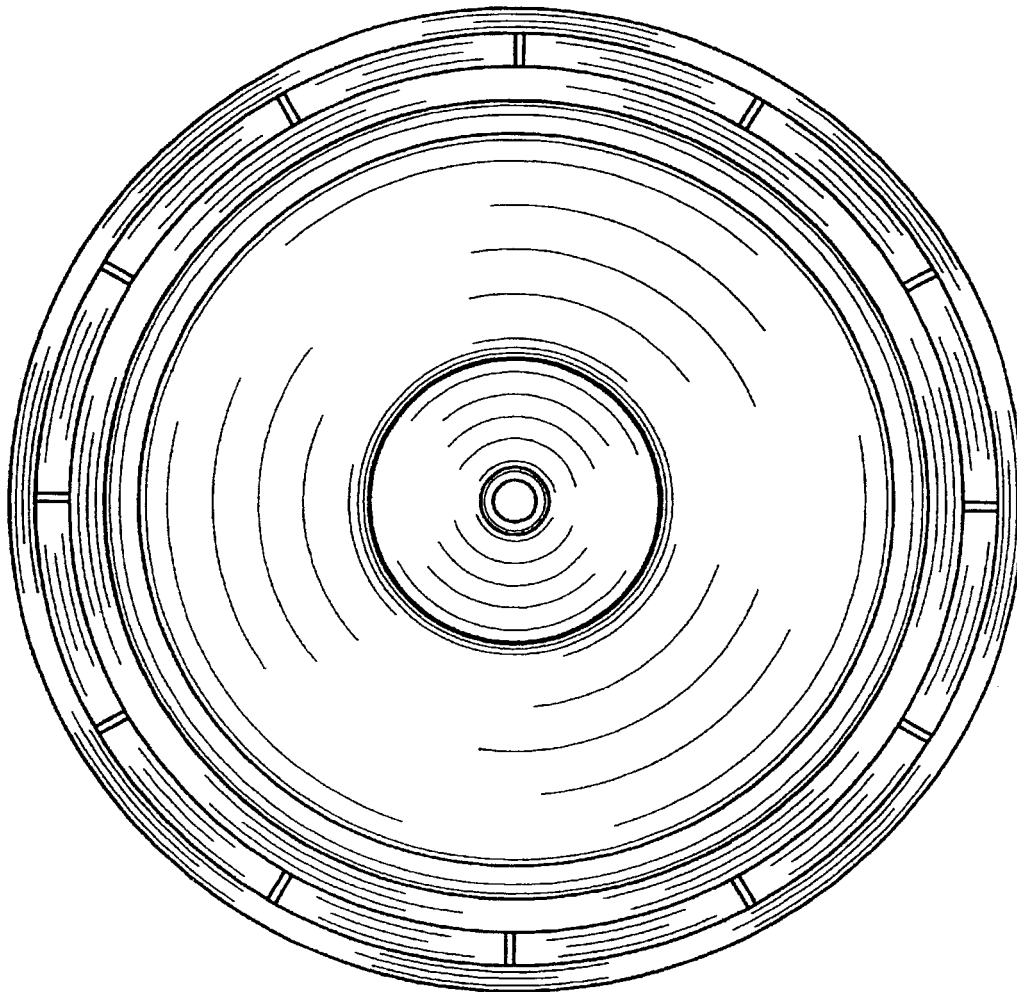


Fig. 3

U.S. Patent

Oct. 19, 1999

Sheet 4 of 5

Des. 415,420

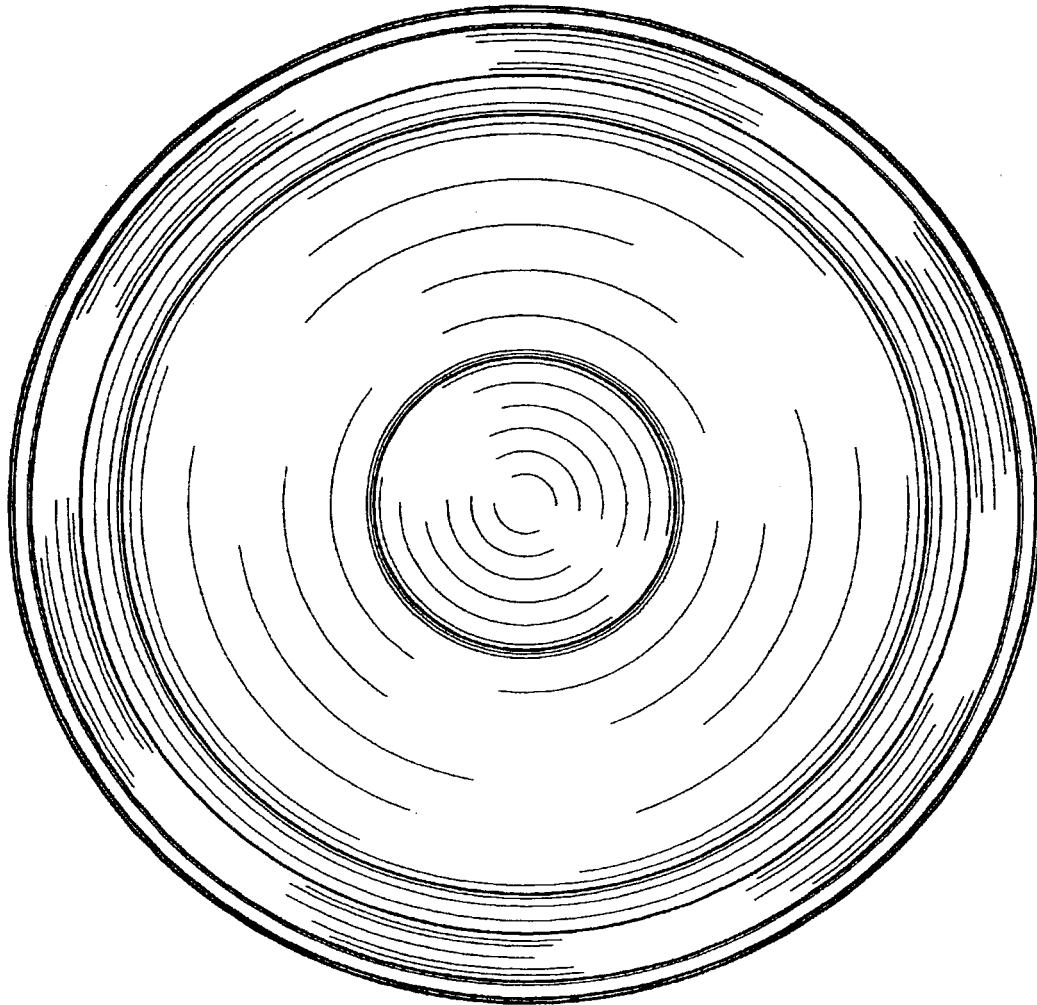


Fig. 4

U.S. Patent

Oct. 19, 1999

Sheet 5 of 5

Des. 415,420



Fig. 5

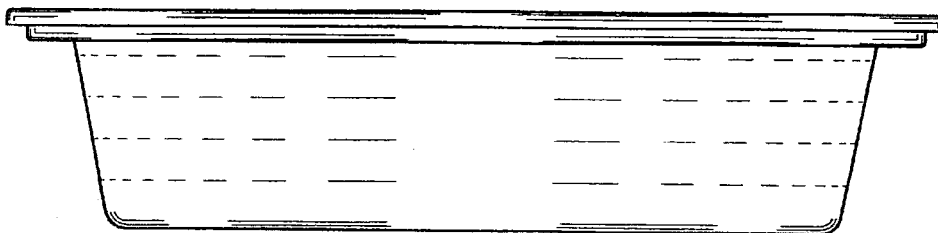


Fig. 6

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U.S. DISTRICT COURT

JAN 26 P 11 59

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NEWSPRING INDUSTRIAL CORPORATION,

Plaintiff,

vs.

SUN GEM PLASTICS ENTERPRISE CO.,
LIMITED, GREAT BARONY INDUSTRIAL
COMPANY LIMITED, SENSE ROAD
INDUSTRIAL COMPANY LIMITED and
BIING RONG HSIU,

Defendants.

CIVIL ACTION NO. 02-2326 (WHW)

SECOND AMENDED COMPLAINT

1. Patent Infringement
2. Trade Dress Infringement
3. Unfair Competition
4. Product Disparagement

Plaintiff, NEWSPRING INDUSTRIAL CORPORATION ("**Newspring**"),
by and for its First Amended Complaint in the above-captioned matter,
states as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement of
Newspring's design patents, U.S. Patent No. D439159 S (the "**'159 Patent**") and U.S. Patent No. D415420 (the "**'420 Patent**"), and utility
patents, U.S. Patent Nos. 6,056,138 (the "**'138 Patent**") and 6,196,404
B1 (the "**'404 Patent**"); trade dress infringement under the Lanham Act,

15 U.S.C. § 1125; and New Jersey state law unfair competition. The '159 Patent and '420 Patent designs are incorporated in plastic containers used primarily for food storage. The '138 and '404 Patents claim a sealing device that is effective at preventing food from leaking out of plastic food containers. Newspring is the assignee of each of these patents. Newspring has invested substantial sums of money in developing the designs protected by the '159 Patent and the '420 Patent, developing the technology claimed by the '138 and '404 Patents, and marketing its plastic food containers under the brand "the VERSAtainer®". Through these efforts, the VERSAtainer® has become a popular and innovative product in the specialized market for plastic food containers. The design of the VERSAtainer® also constitutes protectible trade dress under federal and state law, and it has acquired secondary meaning through the market's recognition of this successful product line.

2. Defendants NEW MAYLINE CO. INC., MAYLINE ENTERPRISES, INC., SUN GEM PLASTICS ENTERPRISE CO., LIMITED (a/k/a SANG RONG PLASTIC PRODUCT, INC.), GEORGE LI, JEN-HSIEN LIU, GREAT BARONY INDUSTRIAL COMPANY LIMITED (a/k/a BIING RONG MIN), SENSE ROAD INDUSTRIAL COMPANY LIMITED and BIING RONG HSIU (collectively hereinafter "**THE NEW MAYLINE DEFENDANTS**"), illegal competitors with Newspring's VERSAtainer® line, are now manufacturing, importing into the United States, distributing, offering for sale and selling imitation "knock-offs" of the VERSAtainer®. These activities constitute infringement of Newspring's '159 Patent, '420 Patent, '138 Patent and '404 Patent; trade dress infringement; product disparagement, and unfair competition under state and federal law.

THE PARTIES

3. Newspring is a corporation organized and existing under the laws of the State of New Jersey in the business of inventing, patenting, manufacturing and selling plastic food service containers, with its principal place of business located at 35 O'Brien Street, Kearny, New Jersey 07032.

4. On information and belief, defendant NEW MAYLINE CO. INC. ("NEW MAYLINE CO.") is a corporation organized and existing under the laws of the State of New Jersey and whose principal place of business is located at 88 Broadway, Jersey City, New Jersey 07306. On information and belief, New Mayline Co. has been a distributor of VERSAtainer® products for several years.

5. On information and belief, defendant Mayline Enterprises, Inc. ("MAYLINE ENTERPRISES") is a corporation organized and existing under the laws of the State of New York and whose principal place of business is located at 133-36 Blossom Avenue, Flushing, New York 11355. On information and belief, Mayline Enterprises is an affiliate of New Mayline Co. and is an importer of New Mayline's infringing products.

6. On information and belief, defendant SUN GEM PLASTICS ENTERPRISES CO., LIMITED ("SUN GEM"), also known as San Rong Plastic Product, Inc., is a Taiwanese company located in the Province of Taiwan within the People's Republic of China. On information and belief, Sun Gem manufactures and imports into the United States and sells and distributes in the United States New Mayline's infringing products.

7. On information and belief, defendant GREAT BARONY INDUSTRIAL COMPANY LIMITED ("**GREAT BARONY**"), also known as Bing Rong Min, is a Taiwanese company located in the Province of Taiwan within the People's Republic of China. On information and belief, Sun Gem manufactures and imports into the United States and sells and distributes in the United States New Mayline's infringing products.

8. On information and belief, defendant SENSE ROAD INDUSTRIAL COMPANY LIMITED ("**SENSE ROAD**") is a Taiwanese company located in the Province of Taiwan within the People's Republic of China. On information and belief, Sun Gem manufactures and imports into the United States and sells and distributes in the United States New Mayline's infringing products.

9. On information and belief, defendant GEORGE LI is a President of New Mayline Co. and an officer, director and shareholder of New Mayline Co. and Mayline Enterprises. Upon information and belief, New Mayline Co. and Mayline Enterprises are closely held corporations.

10. On information and belief, defendant Jen-Hsien Liu is an officer, director and/or controlling shareholder of New Mayline Co. and Mayline Enterprises.

11. On information and belief, defendant Bing Rong Hsiu is an officer, director and/or controlling shareholder of Sun Gem, Great Barony Industrial Co. Ltd. and Sense Road Industrial Co. Ltd. On information and belief, Bing Rong Hsiu's resides at 7F-3 No. 151 Wuchuan 5th Street, West District Taichung City, Taiwan, Republic of China.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction in this patent infringement matter pursuant to 28 U.S.C. §§ 1331 and 1338.

13. Under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b), venue is appropriate in this district, as New Jersey is a place where the New Mayline Defendants are subject to personal jurisdiction, and therefore, is a place where the New Mayline Defendants reside.

14. Upon information and belief, the New Mayline Defendants have committed acts of patent infringement in this district, including, but not limited to, making, having made, using, causing others to use, offering for sale, importing into the United States, selling and marketing patented methods, products and systems in and to the district, and having carried out such acts in a willful manner in such a way as to cause injury and damage to Newspring in this district.

BACKGROUND

15. Newspring was founded in 1988 by Jeffrey Chen ("**Jeffrey Chen**"), its President, as an unincorporated business entity, and incorporated in 1993 to develop, manufacture and market plastic disposable items for the food service industry such as plates, cutlery and containers.

16. Active in the business with Jeffrey Chen is his brother, Corey Chen ("**Corey Chen**"), who is Newspring's Vice-President of Sales.

17. Since 1988, Newspring has grown to a substantial business enterprise with nearly 100 employees.

18. Since 1988, Newspring has developed a reputation in this highly competitive field as a company who reliably delivers products of higher than typical quality at a competitive price.

19. Newspring began by selling plastic soup containers to the Chinese take-out restaurant trade, but has since grown to service a wide range of food service providers.

20. Newspring's sales are made solely to distributors and re-distributors who resell Newspring's products to so-called "end users".

21. End users for Newspring products include restaurants, educational and government institutions with food-service programs, and food processors.

22. Prior to the end of 1996, Jeffrey Chen and his brother, Corey Chen, identified a market need for an improved quality container for the food service industry.

23. Specifically, Jeffrey and Corey Chen concluded that end users lacked a container that would present food in a more elegant, "up-scale" and visually pleasing manner than was then possible in existing food containers.

24. Having identified this marketing opportunity, in late 1996 and early 1997, Jeffrey Chen created a design for a new container that would eventually be marketed under the registered trademark VERSAtainer® ("VERSAtainer®").

A. NEWSPRING'S DESIGN AND UTILITY PATENTS

25. On February 11, 1997, Jeffrey Chen applied to the U.S. Patent and Trademark Office ("PTO") for a design patent, application number 29/066,299.

26. On June 16, 1999, the PTO issued a Notice of Allowability. The '420 Patent was issued on October 19, 1999. Pursuant to an assignment filed by Jeffrey Chen, the '420 Patent as issued lists Newspring as the inventor's assignee.

27. Newspring is the sole owner of the '420 Patent and all of the rights appurtenant thereto existing under the laws of the United States.

28. The specifications and claim of the application consist of drawings of the container with the '420 Patent design on it. These drawings disclose a round container with a lip set outward from the body of the container itself. The lip is joined to the lid of the container with a series of short "spokes." The main body of the lid rises nearly straight up to a flat top, the circumference of which has an embossed or raised ring around it. Inside the raised outer ring is a flat portion, and then another embossed ring around the center of the lid. The very center has a dimple inward terminating in a point. The bottom of the lid also has a central ring. Because the lid is transparent, the ring on the bottom of the container is seen to echo the rings on the lid, giving an overall impression of overlapping rings within rings.

29. Certain other features of the VERSAtainer are relevant to Newspring's trade dress claim, although not part of the '420 Patent, specifically that the opaque plastic bottom is available either in black or white and the weight and feel of the plastic used.

30. Jeffrey Chen chose black because it is a traditional color for the bottoms of food containers in this industry, and white for exactly the opposite reason: that it was non-traditional and made a statement about the innovative nature of the VERSAtainer's design.

31. The '420 Patent covers the purely ornamental and visual aspects of the VERSAtainer's design as disclosed in the drawings submitted to the PTO and further described in this Complaint.

32. On December 23, 1997, Jeffrey Chen applied to the U.S. Patent and Trademark Office ("PTO") for a design patent, application number 29/081,160.

33. On June 28, 2000, the PTO issued a Notice of Allowability. The '159 Patent was issued on March 20, 2001. Pursuant to an assignment filed by Jeffrey Chen, the '159 Patent as issued lists Newspring as the inventor's assignee.

34. Newspring is the sole owner of the '159 Patent and all of the rights appurtenant thereto existing under the laws of the United States.

35. Certain features of the VERSAtainer® are relevant to Newspring's trade dress claim, although not part of the '159 Patent, specifically that the opaque plastic bottom is available either in black or white and the weight and feel of the plastic used.

36. Jeffrey Chen chose black because it is a traditional color for the bottoms of food containers in this industry, and white for exactly the opposite reason: that it was non-traditional and made a statement about the innovative nature of the VERSAtainer®'s design.

37. Jeffrey Chen invented a better sealing device for containers, one that would prevent food leakage and prevent contaminants from seeping into the containers from the outside. Jeffrey Chen worked extensively on developing such a sealing device.

38. On July 22, 1998, Jeffrey Chen applied to the U.S. Patent and Trademark Office ("PTO") for a utility patent on a sealing device to be used with its plastic containers, application number 09/120,985, and filed an assignment of this invention to Newspring.

39. On November 19, 1999, the PTO issued a Notice of Allowability. On May 2, 2000, the '138 Patent was issued to Jeffrey Chen and named Newspring as the assignee.

40. On January 14, 2000, Jeffrey Chen also applied to the PTO for a utility patent on a variation of the sealing device disclosed and claimed in the '138 Patent, application number 09/483,350, and filed an assignment of this invention to Newspring.

41. On August 7, 2000, the PTO issued a Notice of Allowability on this second sealing device patent application. On May 6, 2001, the '404 Patent was issued to Jeffrey Chen and named Newspring as the assignee. Newspring is the sole owner of the '404 Patent.

B. NEWSPRING'S INVESTMENT AND INDUSTRY RECOGNITION

42. Very substantial investment was necessary from Newspring to realize the Chens' concept of an improved food container, including, inter alia, extensive market research, personal interviews of end users, Jeffrey Chen's time in creating the design and engineering of the container, expenses to prepare professional drawings and prototypes, and to create a mold for the first VERSAtainer® product.

43. Newspring's investment in developing the VERSAtainer® represented a risk that could have bankrupted Newspring had the VERSAtainer® been a marketing failure.

44. Newspring's VERSAtainer® product line consists of numerous models. Round containers come in small white, small black, large white and large black versions. There are two rectangular models, one white and one black.

45. The market for food containers is conservative, and very slow to accept an innovative product.

46. When Corey Chen began to market the VERSAtainer®, he encountered resistance to the new product, which has only been overcome by substantial effort over the years since the VERSAtainer®'s introduction.

47. Newspring overcame this initial resistance through persistent sales activities, including the distribution of substantial amounts of free samples, sales visits to distributors, and distribution of printed materials and advertisements to end users and distributors.

48. Eventually, the VERSAtainer® gained acceptance and Newspring's investment and risk were rewarded.

49. The market has recognized that the reason for the success of the VERSAtainer® is its "look" and presentation of food.

50. The marketplace of distributors and commercial end users has recognized the VERSAtainer® and the '159 and '420 patented designs as new and innovative design products in the marketplace for disposable food containers, with valuable benefits not available in previous products and that recognition is due, in substantial part, to the improved look and appearance of the '159 and '420 designs as incorporated in the VERSAtainer®.

51. The relevant market for Newspring is limited to approximately two thousand customers who buy large quantities of containers for use in the food service industry, and is characterized by purchasers aware of differences in product design and who associate certain designs with certain manufacturers such as Newspring.

52. Distributors and commercial end users recognize the VERSAtainer®, with its distinctive look, design and appearance, as the product of Newspring.

53. The design of the VERSAtainer®, including those elements that are the subject of the '159 and '420 Patents, and also including the black and white color of the container bottoms, has acquired a secondary meaning in that it signifies to the purchasing distributor or commercial end user that the product emanates from Newspring and carries with it Newspring's reputation for quality.

54. In the wholesale market for commercial food containers, products are typically known industry-wide by their model numbers, and secondary meaning attaches to those model numbers as indicators of source, manufacturer and commercial affiliation of the product.

55. Newspring's two more prominent models of the VERSAtainer are Model No. 723 (the "723") and Model No. 729 (the "729").

56. The food container industry knows and readily recognizes the 723 and the 729 as distinctive and innovative products of Newspring and associates the numeric designations with Newspring as the source of manufacture and commercial affiliation of the product.

57. 723 and 729, when applied to plastic food containers and within the wholesale market for commercial food containers, have acquired secondary meaning.

58. Another of Newspring's most prominent models of the VERSAtainer® is Model No. 868 (the "868").

59. The food container industry knows and readily recognizes the 868 as distinctive and innovative products of Newspring and associates

the numeric designations with Newspring as the source of manufacture and commercial affiliation of the product.

60. 868, when applied to plastic food containers and within the wholesale market for commercial food containers, has acquired secondary meaning.

C. DEFENDANTS' INFRINGING ACTIVITIES

61. The New Mayline Defendants sell food supplies to customers within New Jersey.

62. For several years, New Mayline has been a distributor of Newspring's VERSAtainer® products. As a result, New Mayline has benefited in the industry by becoming recognized as a provider of Newspring's reputable patented products.

63. Moreover, as a consequence of acting as Newspring's distributor, New Mayline has made inroads into Newspring's sales and distribution channels that, without the benefit of Newspring's product development and marketing investment, New Mayline would not have otherwise been able to develop. Thus, consumers of Newspring's products have come to reasonably rely upon New Mayline as a source of legitimate Newspring patented products.

64. The New Mayline Defendants are offering for sale and selling products that employ the design claimed in the '159 and '420 Patents and the technology claimed by the '138 and '404 Patents.

65. In or about mid-April 2002, Newspring corporate officers became aware that the New Mayline Defendants had begun manufacturing, importing into the United States, marketing and selling a product with Model No. 868 (the "**infringing product**"), which virtually duplicates Newspring Model No. NC-868. The New Mayline Defendants' infringing activities are ongoing and continuing.

66. The New Mayline Defendants' infringing product is virtually identical to the design of Newspring's VERSAtainer®, as the New Mayline Defendants have copied the design claimed in the '159 Patent

and the model number and colors used by Newspring, and use the sealing device covered by the '138 and '404 Patents.

67. On or about May 16, 2002, Newspring employees viewed round container products within the New Mayline warehouse at 88 Broadway in Jersey City, New Jersey that, upon information and belief, utilize Newspring's '420, '138, and '404 Patents and are knock-offs of Newspring's Model Nos. 723 and 729 VERSAtainer®. Based upon this newfound evidence, Newspring has information and belief that the New Mayline Defendants are manufacturing, importing into the United States, marketing and selling products with Model Nos. 723 and 729 (the **"additional infringing products"**), which virtually duplicate Newspring Model Nos. NC-723 and NC-729. The New Mayline Defendants' infringing activities are ongoing and continuing.

68. On or about May 16, 2002, Newspring further learned that Defendants are also marking its purchasing with Newspring's proprietary model numbers, and further that Defendants are packaging their knock-off products in the unique manner in which Newspring has historically packaged its VERSAtainer® products, a package manner which has also gained secondary meaning in the industry and become widely known and recognized by the industry as being associated with Newspring only. Defendants' actions in that regard are also intended to gain a "free ride" on Newspring's investment, goodwill, reputation and proprietary rights in the industry.

69. On information and belief, defendant George Li is an officer, director, and/or controlling principal of New Mayline Co. and Mayline Enterprises. George Li, by himself and acting in concert with the New Mayline Defendants, is aware of every act of infringement

committed by the New Mayline Defendants; controls one or more of the companies that constitute the New Mayline Defendants; and has caused, induced and continues to induce the New Mayline Defendants to commit the acts complained of in this Complaint; and has individually committed each of the acts alleged in this Complaint as committed by the New Mayline Defendants.

70. On information and belief, defendant Jen-Hsien Liu is an officer, director, and/or controlling principal of New Mayline Co. and Mayline Enterprises. Jen-Hsien Liu, by himself and acting in concert with the New Mayline Defendants, is aware of every act of infringement committed by the New Mayline Defendants; controls one or more of the companies that constitute the New Mayline Defendants; and has caused, induced and continues to induce the New Mayline Defendants to commit the acts complained of in this Complaint; and has individually committed each of the acts alleged in this Complaint as committed by the New Mayline Defendants.

71. On information and belief, defendant Bing Rong Hsiu is an officer, director, and/or controlling principal of Sun Gem, Great Barony Industrial Co. Ltd. and Sense Road Industrial Co. Ltd. Bing Rong Hsiu, by himself and acting in concert with the New Mayline Defendants, is aware of every act of infringement committed by the New Mayline Defendants; controls one or more of the companies that constitute the New Mayline Defendants; and has caused, induced and continues to induce the New Mayline Defendants to commit the acts complained of in this Complaint; and has individually committed each of the acts alleged in this Complaint as committed by the New Mayline Defendants.

72. On information and belief, the New Mayline Defendants' importing, manufacturing, packaging, marketing and sale of the infringing product and the additional infringing products is intentional and intended to misappropriate Newspring's rights under the '159 Patent and the '138 and '404 Patents, and wrongfully diverts Newspring's goodwill, including the secondary meaning embodied in the VERSAtainer®'s trade dress to the New Mayline Defendants' own profit.

73. On information and belief, defendants have approached persons or entities in the market for plastic food containers, including Newspring's customers for the VERSAtainer®, offered to sell these customers the infringing product and the additional infringing products, and represented to those customers that the infringing product and the additional infringing products are identical to the VERSAtainer®, but cheaper.

74. On information and belief, other persons or entities in the market for plastic containers, including Newspring's existing customers for the VERSAtainer®, have purchased the infringing product and the additional infringing products instead of Newspring's VERSAtainer® product.

75. On information and belief, the New Mayline Defendants' use in commerce of the trade dress of the VERSAtainer® is intended to, is likely to and has confused, deceived, or caused mistake with respect to the source of manufacture and affiliation of the infringing product and the additional infringing products.

76. Since the New Mayline Defendants began importing, manufacturing and selling the infringing products and the additional infringing products, Newspring has encountered resistance from buyers

to an extent not encountered before, particularly with respect to price.

77. On information and belief, Newspring has lost or is likely to lose sales, and has suffered or will suffer a reduction in its profit margin with respect to the VERSAtainer® as a result of the New Mayline Defendants' manufacturing, importing and selling the infringing products and the additional infringing products.

78. Due to the New Mayline Defendants' free ride on Newspring's investment in inventing, producing and marketing the VERSAtainer®, Newspring's reputation as a successful innovator in the field of plastic food containers has been harmed.

79. Also, the infringing products and the additional infringing products have an inferior look, appearance and customer appeal to the VERSAtainer® due, inter alia, to the inferior plastic of the infringing product's lid.

80. Due to the inferior quality of the infringing products and the additional infringing products, Newspring's reputation and goodwill in the market place and the reputation and goodwill associated with the VERSAtainer® have been damaged and will continue to be damaged by defendants' manufacturing, importing, marketing and selling the infringing product.

81. Due to the New Mayline Defendants' actions, Newspring has lost control over its trade dress, namely the design of the VERSAtainer®, as well as the model numbers and colors used by Newspring.

82. Newspring has been placed at a competitive disadvantage relative to the New Mayline Defendants and other participants in the

industry, because Newspring has absorbed the cost of creating the '159 and '420 patent designs, prosecuting its patents, establishing the VERSAtainer® in the marketplace, and the substantial risk in developing this new product, whereas Newspring's competitors, including the New Mayline Defendants, are now exploiting Newspring's intellectual property without incurring such costs.

COUNT I-PATENT INFRINGEMENT

83. Newspring repeats and realleges each of the allegations in paragraphs 1 through 80 and incorporates them by reference as though fully set forth here.

84. The New Mayline Defendants, acting individually and in concert with each other, have made, imported, used, marketed, sold and offered to sell products that infringe the '159 Patent, the '420 Patent, the '138 Patent and the '404 Patent.

85. The New Mayline Defendants' acts, whether individually or in concert with each other, are in violation of Newspring's rights under the Patent laws of the United States.

86. Notice to the public of Newspring's rights under the '159 Patent, the '420 Patent, the '138 Patent and the '404 Patent has been given in accordance with 35 U.S.C. § 287.

87. On information and belief, the New Mayline Defendants' acts of infringement were and continue to be intentionally and knowingly in violation of the rights of Newspring under the Patent laws of the United States and the '159 Patent, the '420 Patent, the '138 Patent and the '404 Patent.

88. The New Mayline Defendants' wrongful acts of patent infringement are continuing and ongoing.

89. On information and belief, the New Mayline Defendants will not cease committing the wrongful acts alleged in this Complaint without the intervention and injunction of this Court.

90. Newspring has suffered and continues to suffer irreparable harm due to the wrongful acts of patent infringement by the New Mayline Defendants for which Newspring has no remedy at law.

91. Newspring has suffered monetary damages due to the wrongful acts of patent infringement by the New Mayline Defendants, including sales unfairly lost and/or diverted to them, all to the detriment of Newspring.

COUNT II-INDUCEMENT TO INFRINGE
(GEORGE LI, JEN-HSIEN LIU and BIING RONG HSIU)

92. Newspring repeats and realleges each and every allegation contained in paragraphs 1 through 89 as if fully set forth herein.

93. Upon information and belief, at all material times herein, defendants George Li, Jen-Hsien Liu and Biing Rong Hsiu have been principal decision-makers for and officers of each company constituting the New Mayline Defendants and have been moving forces behind the design, development, implementation, advertising, importing, marketing, offering for sale and sale of the New Mayline Defendants' infringing plastic food containers bearing Model No. 868.

94. Upon information and belief, with knowledge of the '159 Patent, the '420 Patent, the '138 Patent and the '404 Patent, George Li, Jen-Hsien Liu and Biing Rong Hsiu have exercised control over the design, development, implementation, importation, advertising, marketing, offering for sale and sale of the New Mayline Defendants' infringing plastic food containers bearing Model Nos. 868, 723, and 729, and have aided and abetted the New Mayline Defendants in

infringing upon the '159 Patent, the '420 Patent, the '138 Patent and the '404 Patent.

95. Upon information and belief, George Li, Jen-Hsien Liu and Bing Rong Hsiu have participated in, directed or controlled the design, development, implementation, advertising, marketing, offering for sale and sale of the New Mayline Defendants' infringing plastic food containers bearing Model Nos. 868, 723 and 729, knowing and intending that these actions would cause infringement upon the '159 Patent, the '420 Patent, the '138 Patent and the '404 Patent.

96. Upon information and belief, George Li, Jen-Hsien Liu and Bing Rong Hsiu have knowingly and willfully aided and abetted, induced, and directed the New Mayline Defendants to infringe upon the '159 Patent, the '420 Patent, the '138 Patent and the '404 Patent, in violation of 35 U.S.C. § 271(b).

COUNT III-TRADE DRESS INFRINGEMENT (Lanham Act)

97. Newspring repeats and realleges each of the allegations in paragraphs 1 through 94 and incorporates them by reference as though fully set forth here.

98. The look of the VERSAtainer®, including its configuration and design, color, transparent lid, model numbers and other elements of its appearance, and the unique manner in which Newspring has historically packaged its products, constitute a trade dress protectable under the trademark laws of the United States, 15 U.S.C. § 1125.

99. Defendants, whether individually or in concert with each other, have used in commerce Newspring's trade dress for the VERSAtainer® in a manner that has caused actual confusion and is

likely to continue to cause confusion, mistake or to deceive another person as to the source, origin or affiliation of the New Mayline Defendants' commercial activities and the New Mayline Defendants' infringing product and the additional infringing products.

100. The acts of the New Mayline Defendants, whether individually or in concert with each other, constitute trade dress infringement in violation of 15 U.S.C. § 1125.

101. Defendants' wrongful acts of trade dress infringement are continuing and ongoing.

102. On information and belief, the New Mayline Defendants acted with knowledge that Newspring had created the VERSAtainer®, that Newspring had made a substantial investment in the development, marketing and creation of secondary meaning in the VERSAtainer®'s design, and the New Mayline Defendants acted intentionally to deceive or confuse others with respect to the source of the infringing and additional infringing products and/or affiliation with the VERSAtainer® and Newspring and to divert the value of Newspring's investment to themselves, and to wrongfully appropriate the benefit of it.

103. On information and belief, the New Mayline Defendants' acts of infringement were and continue to be intentionally and knowingly in violation of the rights of Newspring under the trademark laws of the United States.

104. On information and belief, the New Mayline Defendants will not cease committing the wrongful acts alleged in this Complaint without the intervention and injunction of this Court.

105. Newspring has suffered and continues to suffer substantial irreparable harm due to the wrongful acts of trademark infringement by New Mayline Defendants for which Newspring has no remedy at law, including damage to the valuable reputation and goodwill of Newspring and the valuable reputation and goodwill in the marketplace of Newspring's VERSAtainer® product.

106. Newspring has suffered and will continue to suffer monetary damages due to the wrongful acts of trademark infringement by defendants, including sales unfairly lost and/or diverted to the New Mayline Defendants, all to the detriment of Newspring.

COUNT IV--UNFAIR COMPETITION (New Jersey State Law)

107. Newspring repeats and realleges each of the allegations in paragraphs 1 through 104 and incorporates them by reference as though fully set forth here.

108. The New Mayline Defendants, individually and in concert with each other, have copied the look, appearance, model numbers and design of Newspring's VERSAtainer® and its packaging manner, and used the copy in commerce anticipating and intending that purchasers would use the infringing product or the additional infringing products instead of and as a substitute for the VERSAtainer®, and that purchasers and other consumers would be confused as to the source.

109. The New Mayline Defendants, individually and in concert with each other, have appropriated to themselves the trade dress, reputation and goodwill of Newspring and its VERSAtainer® product.

110. The New Mayline Defendants, individually and in concert with each other have used, sold, offered for sale, distributed and advertised and advertised in this State a reproduction, counterfeit,

copy, or colorable imitation of the VERSAtainer®'s trade dress on their infringing goods in a manner likely to cause confusion or mistake or to deceive as to the source of origin of the infringing goods.

111. The New Mayline Defendants, individually and in concert with each other, have diluted the trade dress of the VERSAtainer®.

112. On information and belief, both the New Mayline Defendants' acts alleged in this Complaint were intentional and with knowledge of the damage to and unfair appropriation of Newspring's rights.

113. The New Mayline Defendants' acts, whether individually or in concert with each other, constitute trafficking in a counterfeit mark.

114. The New Mayline Defendants' acts, whether individually or in concert with each other, constitute unauthorized imitation and passing off, trafficking in counterfeit marks and dilution of Newspring's trade dress in violation of N.J.S.A. 56:4-1, N.J.S.A. 56:3-13, and the common law of New Jersey.

115. On information and belief, The New Mayline Defendants acted with knowledge that Newspring had created the VERSAtainer®, that Newspring had made a substantial investment in the development, marketing and creation of secondary meaning in the VERSAtainer®'s design, and defendants acted intentionally to divert the value of this investment to themselves, and to wrongfully appropriate the benefit of it.

116. On information and belief, the New Mayline Defendants' acts of infringement were and continue to be intentionally and knowingly in violation of the rights of Newspring under the laws of the State of New Jersey.

117. On information and belief, the New Mayline Defendants will not cease committing the wrongful acts alleged in this Verified Complaint without the intervention and injunction of this Court.

118. Newspring has suffered and continues to suffer substantial irreparable harm due to the wrongful acts constituting state-law unfair competition by the New Mayline Defendants for which Newspring has no remedy at law, including damage to the valuable reputation and goodwill of Newspring and the valuable reputation and goodwill in the marketplace of Newspring's VERSAtainer® product.

119. Newspring has suffered and will continue to suffer monetary damages due to the wrongful acts of the New Mayline Defendants constituting state-law unfair competition, including sales unfairly lost and/or diverted to defendants, all to the detriment of Newspring.

COUNT V--PRODUCT DISPARAGEMENT

120. Newspring repeats and realleges each of the allegations in paragraphs 1 through 117 and incorporates them by reference as though fully set forth here.

121. The New Mayline Defendants have disseminated the infringing product and the additional infringing products into the marketplace and caused distributors and end users to confuse the infringing product and the additional infringing products with Newspring's patented plastic food containers.

122. The New Mayline Defendants' infringing actions have impugned the quality of Newspring's VERSAtainer® product line.

123. Due to the New Mayline Defendants' infringing activities, Newspring has suffered damage to its corporate reputation and the

VERSAtainer® line of products has been cheapened in the minds of distributors and end users.

124. Newspring has suffered and will continue to suffer monetary damages due to the acts of the New Mayline Defendants constituting product disparagement, including sales unfairly lost and/or diverted to defendants, all to the detriment of Newspring.

WHEREFORE, Newspring respectfully requests and demands judgment as follows:

a. That the New Mayline Defendants and their agents, employees, assigns, and all persons acting under their control, be permanently enjoined from manufacturing, using, selling, attempting to sell, purchasing, importing, distributing, brokering, promoting, storing, shipping, receiving, maintaining in there possession or otherwise exploiting in commerce the infringing product, the additional infringing products or any other product that (1) infringes the '159 Patent, the '420 Patent, the '138 Patent and the '404 Patent, (2) is confusingly similar in trade dress or otherwise to the VERSAtainer® or Newspring's packaging, or (3) constitutes an unauthorized imitation of the VERSAtainer® or passing off of such an imitation as the VERSAtainer® product;

b. That the New Mayline Defendants be ordered to deliver all of the infringing product, all of the additional infringing products and all machinery or equipment, including without limitation any and all molds, that have been or could be used in the manufacture of the infringing or the additional infringing products in their possession to Newspring within three

days of the judgment of this Court to be destroyed at Newspring's direction and at the expense of the New Mayline Defendants, for which expense each of the New Mayline Defendants shall be jointly and severally liable.

c. That plaintiff Newspring be awarded its actual and consequential damages in an amount necessary to compensate Newspring for the damages caused by the New Mayline Defendants' conduct in violation of law and equity, including the patent infringement, trade dress infringement and unfair competition committed by defendants.

d. That plaintiff Newspring be awarded the profits of each and all of the defendants related to the infringing and additional infringing products, pursuant to 15 U.S.C. § 1117.

e. That plaintiff Newspring be awarded treble damages pursuant to 35 U.S.C. § 284 and 15 U.S.C. § 1117.

f. That the Court declare this an exceptional case and that plaintiff Newspring be awarded its costs and attorneys fees of this action pursuant to 35 U.S.C. § 285 and 15 U.S.C. § 1117.

g. That the sum and aggregate of all monetary awards to Newspring, whether attributable to an award of profits, actual damages, statutory damages, expenses, fees, costs or otherwise, shall be the joint and several liability of each of the New Mayline Defendants.

h. That the New Mayline Defendants be required to make accounting of all of their profits derived from their

wrongful acts as alleged and that all such profits be subject to a constructive trust for the benefit of Newspring.

i. That Newspring be awarded such further relief as the Court shall find just and equitable.

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TIMOTHY S. SUSANIN (TSS-1577)
SHEILA F. MCSHANE (SFM-6051)

Dated: January 26, 2004
Newark, New Jersey

JURY DEMAND

Pursuant to Rule 38(b), plaintiff Newspring Industrial Corporation hereby demands a jury trial on all issues.

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SHEILA F. MCSHANE (SFM-6051)

Dated: January 26, 2004
Newark, New Jersey

LOCAL CIVIL RULE 11.2 CERTIFICATION

I, **DAVID E. DE LORENZI**, attorney for plaintiff Newspring Industrial Corporation, do certify pursuant to Local Civil Rule 11.2 that the matter in controversy is not the subject of any other action pending in any other court of law or of any arbitration or administrative proceeding.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

David E DeLorenzi
DAVID E. DE LORENZI

DATED: January 26, 2004
Newark, New Jersey

RECEIVED-CLERK
U.S. DISTRICT COURT
2004 JAN 26 P 4:59



NEWSPRING INDUSTRIAL CORPORATION, Plaintiff-Appellant, v.
SUN GEM PLASTICS ENTERPRISE CO., LIMITED, and BIING RONG
HSIU, Defendants-Appellees, and NEW MAYLINE CO., INC.,
MAYLINE ENTERPRISES, INC., JEN-HSIEN LIU, and GEORGE LI,
Defendants.

02-1450

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

66 Fed. Appx. 863; 2003 U.S. App. LEXIS 8380

May 1, 2003, Decided

NOTICE: [**1] THIS DECISION WAS
ISSUED AS UNPUBLISHED OR
NONPRECEDENTIAL AND MAY NOT BE CITED
AS PRECEDENT. PLEASE REFER TO THE
RULES OF THE FEDERAL CIRCUIT COURT OF
APPEALS FOR RULES GOVERNING CITATION
TO UNPUBLISHED OR NONPRECEDENTIAL
OPINIONS OR ORDERS.

DISPOSITION: Affirmed.

JUDGES: Before MICHEL, Circuit Judge,
FRIEDMAN, Senior Circuit Judge, and
LINN, Circuit Judge.

OPINION BY: LINN

OPINION

[*864] LINN, *Circuit Judge*.

Newspring Industrial Corporation
("Newspring") appeals from the denial
of its motion for a preliminary
injunction by the United States
District Court for the District of New
Jersey. *Newspring Indus. Corp. v. New
Mayline Co.*, No. 02-2326 (WHW) (D.N.J.
May 29, 2002). Because the district
court did not abuse its discretion in

denying Newspring's motion in view of
Newspring's failure to show a
reasonable likelihood of success on
the merits of its claims, we *affirm*.

I

In April of 2002, Newspring became
aware that several companies,
including Sun Gem Plastics Enterprise
Company, Limited ("Sun Gem"), were
making and/or selling plastic food
containers similar to Newspring's
"VERSAtainer" products for use
primarily by Chinese restaurants. On
May 15, 2002, Newspring filed a
Complaint in which it alleged patent
[**2] infringement of United States
Design Patent No. 439,159 and United
States Patents No. 6,056,138 and No.
6,196,404; trade dress infringement
under the Lanham Act, 15 U.S.C. §
1125; and unfair competition under New
Jersey state law. On the same day,
Newspring filed a motion under 35
U.S.C. § 283 for a preliminary
injunction, a temporary restraining
order, and seizure of infringing
products and molds used to produce the
allegedly infringing products. This
application was based solely upon the

claims of patent infringement.

[*865] After an ex parte hearing, the court granted a temporary restraining order and ordered seizure of both the accused products and the molds used in their production. After an interim application by the defendants to have the temporary restraining order dissolved was denied, a hearing was held on May 28, 2002 to decide whether a preliminary injunction should be granted. Prior to this hearing, Newspring sought to amend its application for preliminary injunction to encompass its original trade dress and unfair competition claims, in addition to the patent claims. The defendants objected to this change, stating that they lacked [*3] time to respond adequately to the additional issues. The hearing was held on May 28, and the court denied Newspring's application on the following day.

This court has jurisdiction over Newspring's appeal from the denial of its motion under 28 U.S.C. §§ 1292(c)(1) and 1295(a)(1). *Jack Guttman, Inc. v. Kopykake Enters. Inc.*, 302 F.3d 1352, 1356, 64 USPQ2d 1302, 1304 (Fed. Cir. 2002).

II

The grant or denial of a preliminary injunction under 35 U.S.C. § 283 is within the discretion of the district court. *Id.* We will reverse such a decision "only upon a showing that the court abused its discretion, committed an error of law, or seriously misjudged the evidence." *Id.* (quoting *Globetrotter Software, Inc. v. Elan Computer Group, Inc.*, 236 F.3d 1363, 1367, 57 USPQ2d 1542, 1544-45 (Fed. Cir. 2001)). A patentee applying for a preliminary injunction must show: "(1) a reasonable likelihood of success on the merits; (2) irreparable harm if an injunction is not granted; (3) a balance of hardships tipping in its favor; and (4) the injunction's favorable impact on the public

interest." *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1350, 57 USPQ2d 1747, 1751 (Fed. Cir. 2001). [*4] In its analysis, the district court focused on the first of these factors: whether Newspring had a reasonable likelihood of success on the merits of its claims.

Newspring argues that several deficiencies in the district court's analysis amount to an abuse of discretion in the denial of its motion. Specifically, Newspring argues that the district court failed to consider each of the three patents in suit separately in assessing infringement, failed to conduct a proper claim construction, compared the defendants' allegedly infringing products, not with the claims of Newspring's patents, but rather with Newspring's own commercial products, and confused the applicable legal standards for design and utility patent infringement. Newspring asserts that these failures call for a vacatur of the denial of its motion and a remand of the case for further consideration. We do not agree.

A

Newspring asserts that the district court's failure to construe the claims of the utility and design patents at issue was erroneous. Determining the proper scope of the claims of a patent by construing the language of those claims is, of course, the first step in an infringement analysis. *Catalina Lighting, Inc. v. Lamps Plus, Inc.*, 295 F.3d 1277, 1286, 63 USPQ2d 1545, 1550-51 (Fed. Cir. 2002) [*5] ("As with utility patents, determining whether a design patent is infringed is a two-step process. First, the court must construe the design patent's claim."); *Cybor Corp. v. FAS Techs., Inc.*, 138 F.3d 1448, 1454, 46 USPQ2d 1169, 1172 (Fed. Cir. 1998) (en banc). However, in the context of a preliminary injunction request, we "will not lightly intrude upon a

district court's discretionary decision to issue only a tentative [*866] claim construction and to base its resolution of a preliminary injunction motion upon that tentative claim construction." *Jack Guttman*, 302 F.3d at 1361, 64 USPQ2d at 1308. It is apparent that the district court conducted at least such a tentative construction of the utility patent claims. In citing the basis for its ruling, the district court interpreted those claims as follows:

The container has a lid and a base which form a series of three self-reinforcing seals when mated. A protrusion on the lid is reinforcing the triple seal formed between the lid and base. The protrusion upon the force of the base locks the lid and base together. The third seal has the largest surface area and acts as the first line of defense against [**6] food leakage out of the container, and the last line of defense against the entry of contaminants into the container.

Hearing Tr. at 35.

Although the court did not construe the single claim of the '159 design patent in a similar manner, this is of less moment. That claim, like most design claims, is narrow in scope and limited to the figures of the patent: "The ornamental design for a rectangular stackable container including triple sealed rim, as shown and described." '159 patent, col. 2, ll. 7-8. See *In re Mann*, 861 F.2d 1581, 1582, 8 USPQ2d 2030, 2031 (Fed. Cir. 1988) ("Design patents have almost no scope. The claim at bar, as in all design cases, is limited to what is shown in the application drawings."). We find no error of law in the district court's preliminary claim construction.

B

Newspring next alleges that the district court erred in comparing the allegedly infringing products, not to the claims of its patents, but rather to Newspring's own commercial product, the VERSAtainer. Newspring directs our attention to the court's request during the hearing for the VERSAtainer: "Show me. No, show me in the product. Because I have already looked at your [**7] claim but I want to see it in real life. Show me your seals in the product." Hearing Tr. at 16. However, the fact that the district court made reference to Newspring's own product during the hearing is insufficient to show that the court erred by failing to consider the terms of the patent claims. The patents were in evidence, and we must presume that the district court considered those patents in reaching its conclusion, particularly when the district court stated explicitly that "I have already looked at your claim." *Id.*; see, e.g., *Western Pac. Fisheries, Inc. v. SS President Grant*, 730 F.2d 1280, 1285 (9th Cir. 1984) ("We presume that the judge considers all of the evidence."). Newspring provides no evidence that the court ignored the patents in suit. In fact, during the hearing, the court specifically stated that it had not only looked at but also carefully considered the claims of the patents: "We got through all the arcane language of the patent. That's how we figured it out, my clerks and I. We went through and actually went through all of this." Hearing Tr. at 14. Moreover, in denying Newspring's motion from the bench, the court stated that it had [**8] "looked at the diagrams of the plaintiffs patented product." Hearing Tr. at 34. A simple request to inspect a patentee's commercial product during a motion hearing--for whatever additional understanding that inspection might provide--is insufficient to show legal error, particularly where the record

indicates that the court gave careful consideration to the patent claims.

C

Newspring further alleges that the district court applied an incorrect legal [*867] standard for design patent infringement. In making such an infringement determination, the comparison of the claims of the design patent to the accused product embraces two distinct tests, both of which must be satisfied to make out infringement: the "ordinary observer" test, and the "point of novelty" test. Contessa Food Prods., Inc. v. Conagra, Inc., 282 F.3d 1370, 1377, 62 USPQ2d 1065, 1067 (Fed. Cir. 2002). The focus of the "ordinary observer" test is whether "in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same." Gorham Co. v. White, 81 U.S. 511, 528, 20 L. Ed. 731 (1871). The district court found that this "ordinary observer" [*9] test was not satisfied, and based its denial of Newspring's motion on that determination.

Newspring alleges that the court employed a stricter standard than is called for in the "ordinary observer" test. It points to the court's statement that "it may be that I'm more microscopically anally fixated than others." Hearing Tr. at 7. However, this remark was made during a colloquy between the court and Newspring's attorney, and no such remark appears at that portion of the transcript in which the court announces the bases for its decision. This off-the-cuff remark is insufficient to establish that the court abused its discretion and does not suggest, much less support, the proposition that the district court employed an erroneous test.

D

Newspring argues next that the district court seriously misjudged the

evidence, *Jack Guttman*, 302 F.3d at 1356, 64 USPQ2d at 1304, in concluding that Newspring had not shown it had a reasonable likelihood of success on the merits of its patent infringement claims. During the motion hearing, the court set forth its grounds for this conclusion with respect to the utility patents as follows:

Then we turn to the allegation that [**10] the three edges have been infringed. The three edges to seal the product have been sealed, have been used as sealing efforts in the plaintiff's product. It appears to me that the edges, as I asked counsel for the plaintiff, although there are three in number, at least three in number with regard to each, but with regard to the offending product there are four edges, and the edges in my determination at this point are not identical nor are they so similar as for me to claim that there is infringement.

Hearing Tr. at 37. Newspring's counsel asserted at oral argument that the district court based its finding of no reasonable likelihood of success on the merits of utility patent infringement simply on the presence of this additional seal, and that the presence of an additional element in the accused product would not avoid a finding of infringement if that product contained other elements corresponding to all the limitations of the asserted claim. This latter comment is of course a correct legal proposition. But we believe that the district court, in referring to the fourth edge, was simply referring to the fact that the ridge present in the accused containers effectively divided [**11] the interior seal into two seals, thereby reducing its surface area, so that it was no longer

reasonably likely to meet the literal language of the claims. In addition, in concluding that Newspring had not carried its burden on the merits of design patent infringement, the district court relied on the presence of an additional plane in the patented container, as well as the difference in the size of the circles found in the lid of the patented container and the allegedly infringing containers. The court concluded that "it does not seem to me at this point that one [*868] would be misled or confused or consider that these two are substantially identical." Hearing Tr. at 36. In short, the district court set forth specific findings supporting its determination, and we are not prepared to say, on this record and in the context of preliminary injunction proceedings, that the district court misjudged the evidence or otherwise abused its discretion in failing to find a likelihood of infringement of the asserted patents.

E

Lastly, with respect to the trade dress and unfair competition claims, Newspring asserts that the district court failed entirely to consider these claims. It is true that the

[**12] district court made no explicit findings on either the trade dress or unfair competition claims. However, Newspring appears to have done no more than make broad allegations of trade dress and unfair competition violations in its complaint, and these issues were not discussed at the preliminary injunction hearing. We presume, as we must, that the district court thoroughly considered the evidence before it and determined that Newspring had not shown a substantial likelihood of success on the merits of either claim. We decline to hold that the court abused its discretion in denying a preliminary injunction motion based on claims supported by no more than naked allegations.

CONCLUSION

The district court did not abuse its discretion, commit an error of law, or seriously misjudge the evidence in concluding that Newspring failed to show a reasonable likelihood of success on the merits of its claims and in denying Newspring's motion for a preliminary injunction. We therefore affirm.

Exhibit B-4A



Exhibit B-4B





US006056138A

United States Patent

Chen

[19]

[11] Patent Number:

6,056,138

[45] Date of Patent:

May 2, 2000

[54] TRIPLE SEAL CONTAINER

[75] Inventor: Jeffrey Chen, Staten Island, N.Y.

[73] Assignee: Newspring Industrial Corp., East Newark, N.J.

[21] Appl. No.: 09/120,985

[22] Filed: Jul. 22, 1998

5,553,701 9/1996 Jarecki et al. 220/780 X
 5,666,875 9/1997 Wener 220/4.24 X
 5,758,791 6/1998 Mangla 220/780 X
 5,833,116 11/1998 Guillin 220/783

Primary Examiner—Nathan J. Newhouse
 Attorney, Agent, or Firm—Gibbons, Del Deo, Dolan,
 Griffinger & Vecchione

[57] ABSTRACT

A triple sealed container, comprising a base portion and a lid portion. The base consisting of a unitary component including a bottom portion attached to an upwardly extending perimeter wall, which is further connected to a peripherally extending rim having an inner and outer edge. The lid also consists of a unitary component, with a downwardly extending wall, which is connected to a peripherally extending rim also having an inner and outer edge. The base edge and the lid edge are correspondingly shaped to be mateable. The lid rim is also correspondingly shaped to engage the base rim. The contact of the edges and the rims form three main seals. The first seal is a result of the contact between the exterior edges of the base edge and the lid edge. The second seal is a result of contact between the interior edges of the base edge and the lid edge. The first and second seals are shaped to provide a self-reinforcing seal configuration wherein the initial engagement of the first or second seals initiates the third seal. The third seal is a result of the peripherally extending base and lid rims contacting each other leaving a seal surface area greater than the areas of said first or second seals. This third seal provides substantially more protection against spoilage and spilling, by dramatically decreasing the odds of foreign substances contacting food products, or food products leaking into contact with surfaces exterior to the container. In addition, the assembly is stackable and same size nestable.

Related U.S. Application Data

[63] Continuation-in-part of application No. 29/066,299, Feb. 11, 1997, Pat. No. Des. 415,420, and a continuation-in-part of application No. 29/081,160, Dec. 23, 1997.

[51] Int. Cl.⁷ B65D 41/16

[52] U.S. Cl. 220/4.21; 220/781; 220/792; 206/505

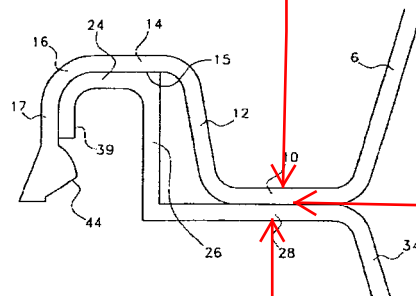
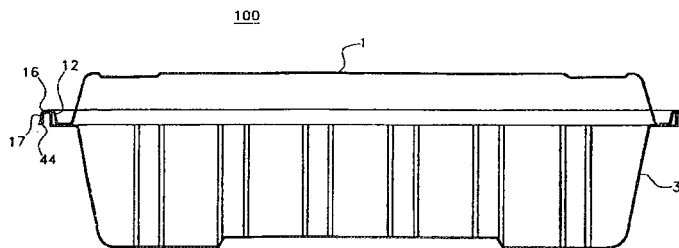
[58] Field of Search 220/305, 780, 220/781, 782, 783, 790, 792, 796, 797, 798, 801, 802, 4.21, 4.24; 206/503, 505, 508, 515, 519

[56] References Cited

U.S. PATENT DOCUMENTS

2,798,631 7/1957 Engel 220/266 X
 3,861,433 1/1975 Schier et al. 220/793 X
 4,042,143 8/1977 Biggins .
 4,124,141 11/1978 Armentrout et al. 220/783
 4,360,118 11/1982 Stern 220/4.24
 4,466,552 8/1984 Butterworth et al. 220/798
 4,555,043 11/1985 Bernhardt 220/783
 4,844,263 7/1989 Hadlke 206/508
 4,863,054 9/1989 Capetta 220/4.23
 5,356,026 10/1994 Andress et al. .
 5,377,860 1/1995 Littlejohn et al. .
 5,395,003 3/1995 Matsuda .
 5,542,234 8/1996 Wyslowsky et al. 53/433

5 Claims, 6 Drawing Sheets



Description of Interior Seal

U.S. Patent

May 2, 2000

Sheet 1 of 6

6,056,138

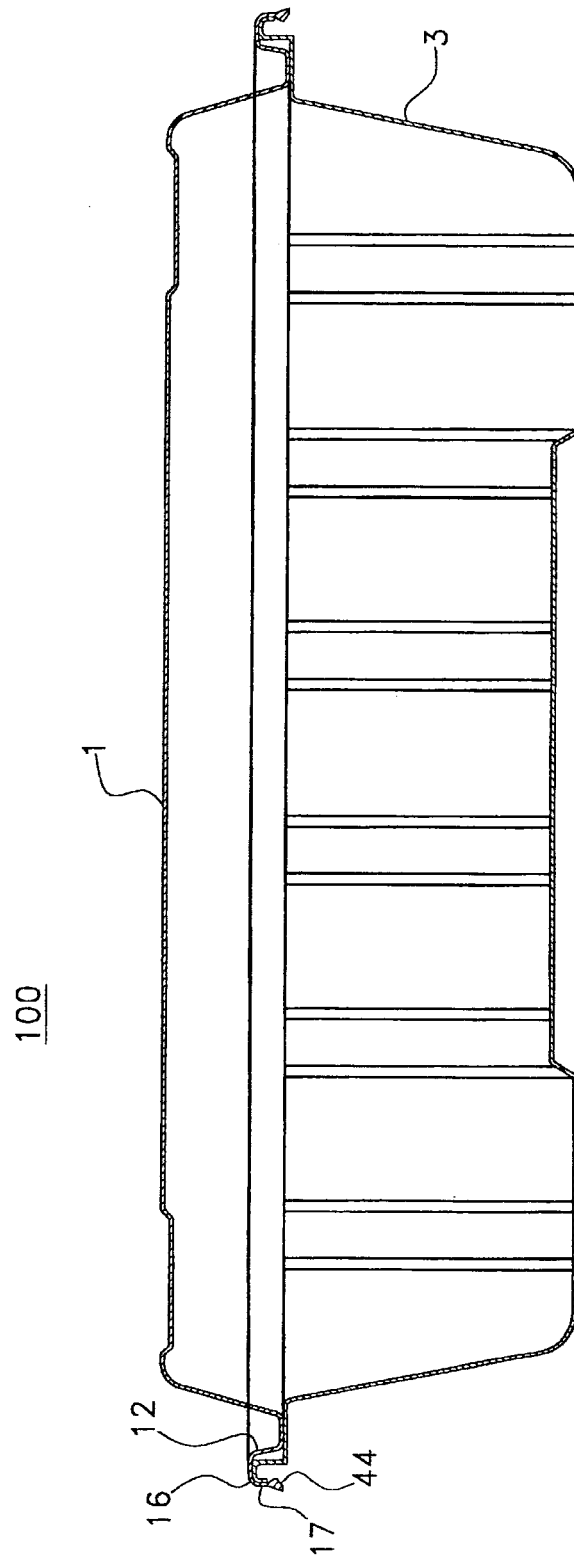


Fig. 1

U.S. Patent

May 2, 2000

Sheet 2 of 6

6,056,138

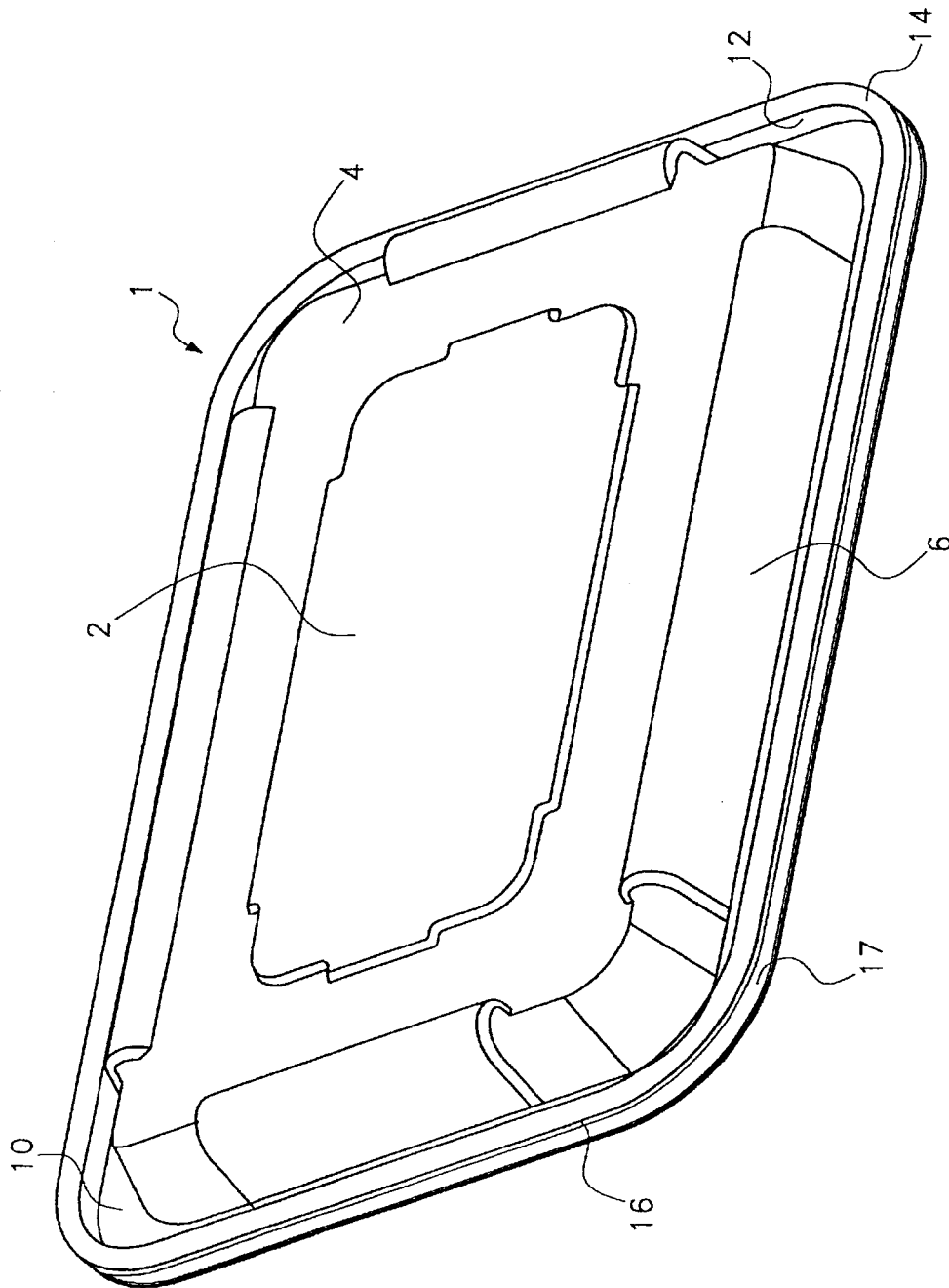


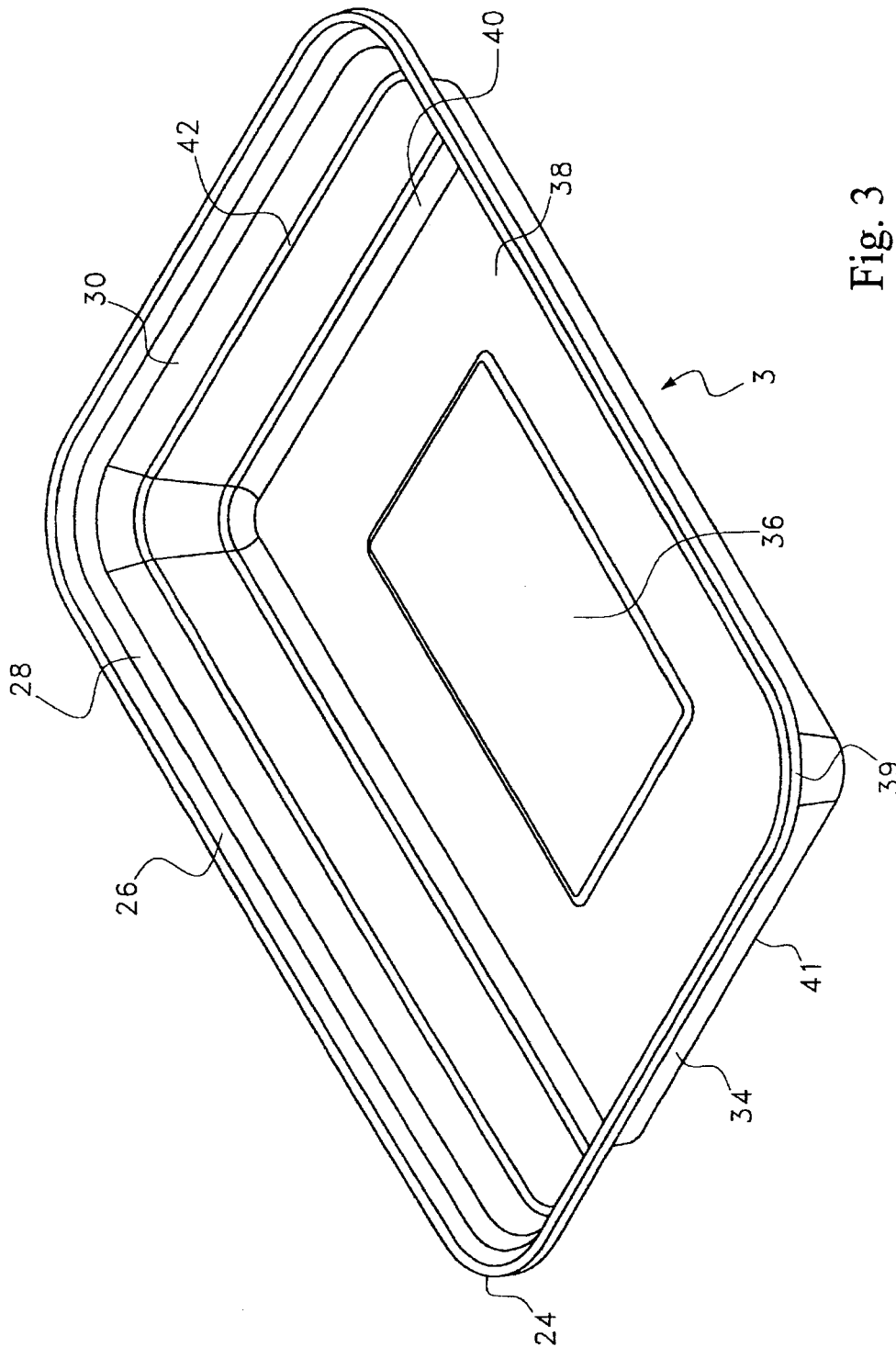
Fig. 2

U.S. Patent

May 2, 2000

Sheet 3 of 6

6,056,138



U.S. Patent

May 2, 2000

Sheet 4 of 6

6,056,138

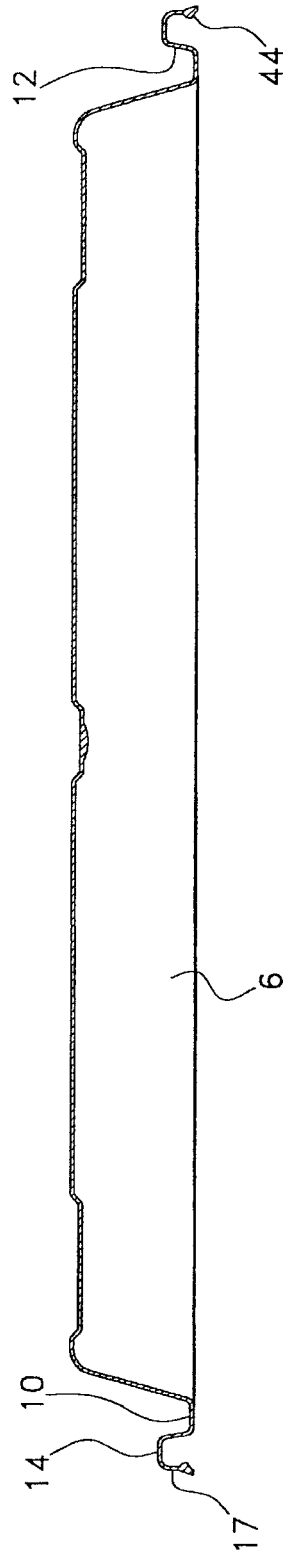


Fig. 4

U.S. Patent

May 2, 2000

Sheet 5 of 6

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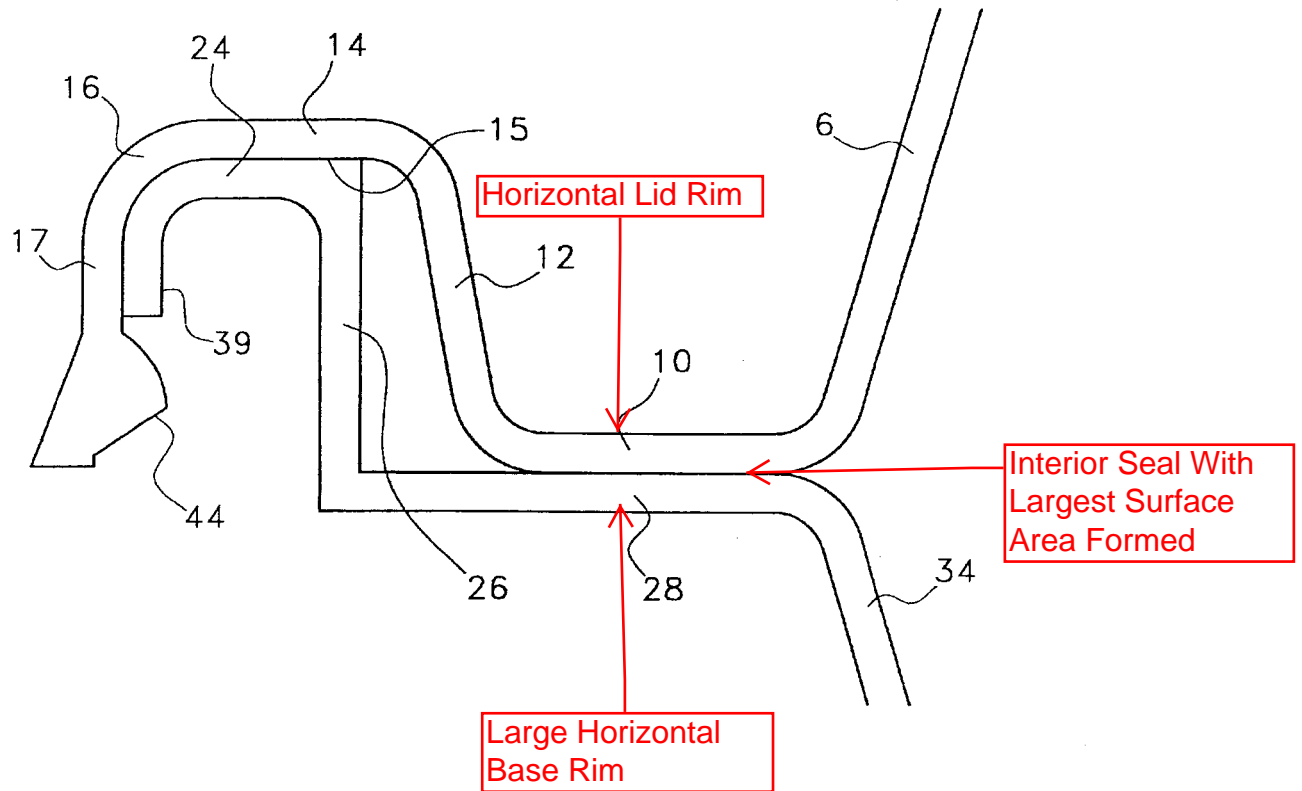


Fig. 5

U.S. Patent

May 2, 2000

Sheet 6 of 6

6,056,138

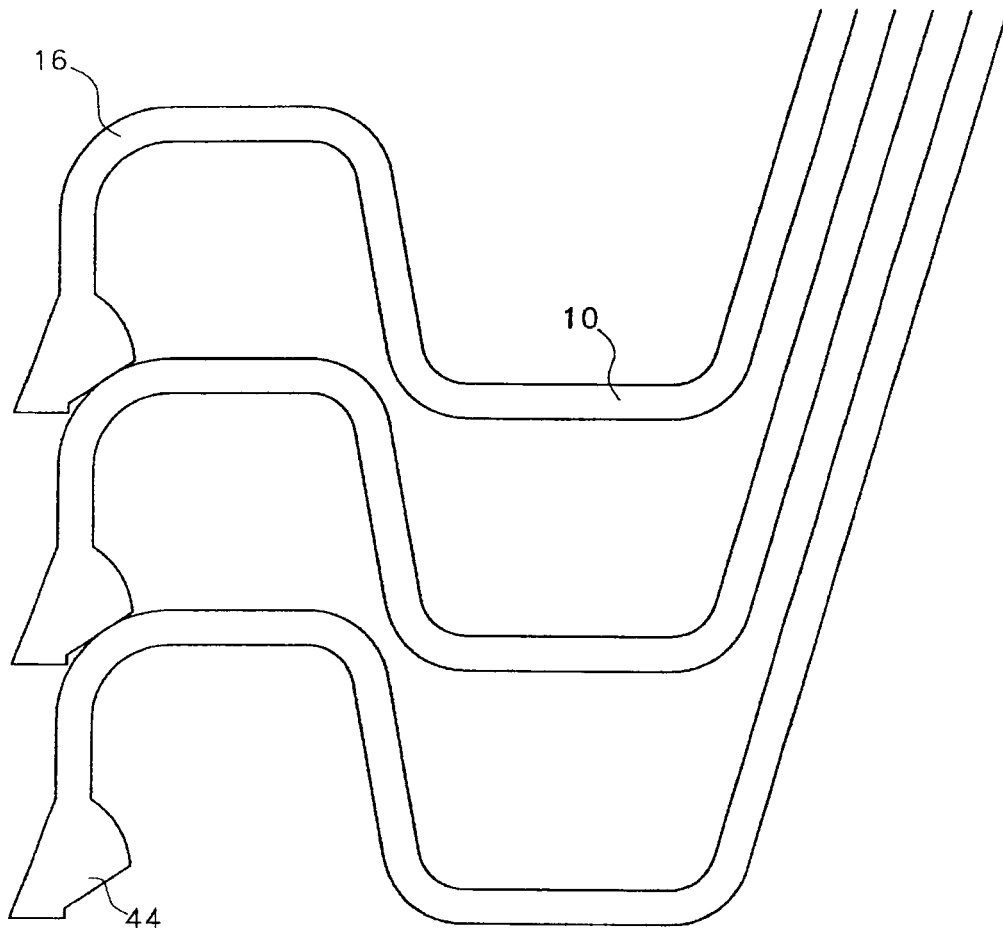


Fig. 6

6,056,138

1

TRIPLE SEAL CONTAINER

RELATED APPLICATIONS

The present patent application is a continuation-in-part of U.S. patent application Ser. Nos. 29/066,299, having a filing date of Feb. 11, 1997, now U.S. Pat. No. D 415,420 and 29/081,160, having a filing date of Dec. 23, 1997. The applications having common inventors and assignees and being incorporated herein by reference.

FIELD OF THE INVENTION

This invention generally relates to containers for storing and transporting food, and in particular to a sealing component between a base and a rim.

BACKGROUND OF THE INVENTION

Container assemblies consisting of a lid and base portion for storing foods, are capable of being sealed to prevent leakage and spoilage. These containers require certain desirable features, most importantly, the ability to stop the flow of foods out of the container area and to prevent the introduction of bacteria and air into the container. Moreover, the container's lid and base should be easily assembled and disassembled for usage, so that the seals can be broken and resealed with minimal effort. A sealed container should also be stackable inside itself, in order to require a minimal storage space.

Although container assemblies having only one or two seals give acceptable results, food leakage can occur when one or both seals are broken. Typical double seal containers provide two identical seals, one interior to the other. The seals have small surface areas to prevent the flow of food, liquids and/or air. Disadvantageously, small surface areas can result in occasional failure. From a probability standpoint, if a single seal fails once every one-hundred times, the odds of two seals failing at once falls to one in ten-thousand. This is an unacceptable number of failures given the large number of containers in use.

Moreover, the potential hazards from spoilage and leakage of tainted foods are a great concern in both the food industry and at home. For example, the food can leak entirely from the container or be trapped between seals, potentially being exposed to contaminants and bacterium inducing spoilage or health hazards. A container which could provide both protection from outside bacterial contamination, and prevent leakage from food products inside the container would be greatly desired, be cost-effective, and be safer to use.

SUMMARY OF THE INVENTION

The present invention introduces a third seal with greater surface area to prevent leakage and promote food freshness. This is implemented through a series of three self-reinforcing seals which form both interior and exterior to the base periphery. The third, much larger seal, acts as an entry and exit barrier. Specifically, the third seal acts as a first line of defense against food product leakage and as a final defense against air and bacterium entering the container. Statistically, the odds of the two outer seals, and the third, inner seal, failing are one failure per one million plus uses.

In an exemplary embodiment of the present invention, a container includes a base, a lid and a set of three seals for releasably connecting the base and lid. An exterior and middle seal provide alignment between the base and lid to establish an interior seal having a greater sealing surface area.

2

Advantageously, three seal prevention of leakage and spoilage does not preclude easy assembly of the lid and base. The ability to break the seal, and remove or introduce food to the container, then close all three seals is relatively easily accomplished with the present invention. Neither the opening nor the closure of this invention are multi-step tasks. The closure involves no more than simple pressure on the lid and the sealing of one outer seal ensures the closure of the remaining seals.

The containers of the present invention are same size stackable, with one base fitting into the base of the next container, and the lids acting in the same fashion. This dramatically reduces the storage space required to keep large quantities of the invention. The present invention is, therefore, a safe and easy to use container that can be used in the food preparation and distribution industries and in the private home.

BRIEF DESCRIPTION OF THE DRAWINGS

For a detailed understanding of the present invention, reference should be made to the following detailed description taken in conjunction with the accompanying drawings wherein:

FIG. 1 is a side view of the container, with the lid sealed to the base;

FIG. 2 is a perspective view of the lid;

FIG. 3 is a perspective view of the base;

FIG. 4 is a cross section side view of the lid, showing a cut away section of the rim to indicate sealing regions;

FIG. 5 is an enlarged view of the seal between the lid and the base;

FIG. 6 is an enlarged view of three lids, stacked one on top of the next;

DETAILED DESCRIPTION

Referring to FIG. 1, there is shown a container 100 that comprises a lid 1 and a base 3. Although container 100 is rectangular in configuration, container 100 may be, for example, round, square, oval, oblong, or any other desired shape.

Lid 1, which is further illustrated in FIG. 2, includes a substantially planar top portion 4, with a slightly raised, substantially planar region 2 parallel to portion 4. Extending from the top portion 4 is a downwardly extending peripheral wall 6. A horizontally extending rim 10 is connected to downwardly extending peripheral wall 6. Rim 10 is also connected to generally perpendicular upwardly extending edge 12, which in turn is connected to outwardly extending lid region 14. Lid region 14 is further connected to downwardly extending lid region 16, which is also connected to downwardly extended region 17. Downwardly extended region 17 is generally parallel to upwardly extending edge 12. Downwardly extended region 17 ends in a locking lip 44, as illustrated in FIG. 1.

Referring to FIG. 3, a base 3 includes a substantially planar bottom portion 38, including a slightly raised, substantially planar region 36, that is parallel to bottom portion 38. Connected to the bottom portion 38, is a convex extension surface 40, which runs along the perimeter of base 31. From convex extension surface 40 extends an upwardly extending perimeter wall 34. Perimeter wall 34 ends in a generally horizontally extending base rim region 28. Base rim region 28 is integrally connected to a generally perpendicular upwardly extending base sealing edge 26, which ends in an outwardly extending surface 24, that is parallel to

6,056,138

3

the rim region 28. Surface 24 terminates in a downwardly extending base sealing edge 39.

Given the above structure, the interaction between the various lid and base components are now described with respect to FIGS. 1, 4 and 5. This interaction creates the triple seal formation of the present invention.

Lid 1 is pressed in a downward motion onto base 3. Lid 1 and base 3 are aligned by extended region 17 with locking lip 44 contacting downwardly extending base sealing edge 39.

Upon the application of downward pressure, locking lip 44 flexes extended region 17 outward at downwardly extending lid region 16. Further downward pressure on the lid 1 pushes locking lip 44 past the end of downwardly extending base sealing edge 39. Locking lip 44 then moves inwardly with extended region 17 flexing inwardly to contact downwardly extending base sealing edge 39. The resulting contact of downwardly extending lid region 16 to outwardly extending base sealing edge 24 of extending base sealing edge 26 creates the first seal. Contact of outwardly extending lid region 14 with base sealing edge 15 creates the second seal. Lid 1 and base 3 are held together with the locking lip 44 contacting the end of downwardly extending base sealing edge 39. The present invention's third seal is formed as horizontally extending rim 10 of the lid 1 is pressed against horizontally extending base rim region 28 of base 3.

The engagement of the first seal, between lid sealing edge 16 and base sealing edge 24, will urge the engagement of the second seal, between lid sealing edge 14 and base sealing edge 15 as well as the engagement of the third seal between base rim 28 and lid rim 10. Thus, the engagement of the outermost seal will assure proper alignment of the lid 1 on the base 3. Accordingly, a container having a reliable seal about the periphery, as well as an additional edge seal and a large interior third seal is provided.

The third seal is formed between lid rim 10 and base rim 28, creating the interior seal. In the exemplary embodiment of the invention, the interior seal is larger than either the exterior seal or the middle seal. With the increased surface area, this interior seal acts as a larger first barrier against leakage from the container, and a superior final barrier against bacterium and contamination.

Referring now to FIGS. 1 and 6, it can be seen that the lids 1, and base portions 3, can be easily stacked in nested columns, lid upon lid and base upon base. The lids 1 are stackable since the locking lip 44 rests directly upon the outer edge 16 of the next lid. The bases are also stackable since the planar bottom portion 38 of one base rests upon the planar base portion 38 of the next base. In addition, horizontal rim 28 provides support for the next base rim 28. The stackability of the lids and bases provides a minimal stacking height and minimizes the required storage area.

In an alternative embodiment of the present invention, the container may take on an oval, or circular configuration. The critical components of both the lid 1 and base 3 remain substantially identical to those described herein.

As indicated, the present container is set forth, consisting of both a base portion and a lid portion. The container has an outer edge seal, a second edge seal interior to the first seal, and a third seal running along the periphery of the rim, interior to both the first and second seals. These seals are self-reinforcing and will be formed when the lid portion of the container is received by the base. The seals are self-reinforcing in that the engagement of the first seal will urge the second and third seals and ensure the alignment of the lid.

4

While the invention has been described with reference to preferred embodiments, it should be appreciated by those skilled in the art that the invention may be practiced, otherwise than as specifically described herein without departing from the scope of the invention. It is, therefore, to be understood that the scope of the invention be limited only by the appended.

What is claimed is:

1. A container having three seals, comprising:

a base having

a substantially planar bottom,

a base perimeter wall extending substantially vertically upward from said bottom,

a base rim extending substantially horizontally outward from said base perimeter wall, and

a base sealing edge attached to said base rim; and

a lid having

a substantially planar top,

a lid perimeter wall extending substantially vertically downward from said top,

a lid rim extending substantially horizontally outward from said lid perimeter wall,

a lid sealing edge an ached to said lid rim, and

a locking lip protruding from said sealing edge;

wherein said base sealing edge and said lid sealing edge are molded to be correspondingly mateable to each other and upon mating said base sealing edge and said lid sealing edge form a middle seal and an exterior seal and said base rim and said lid rim form an interior seal,

wherein said interior seal has a surface area greater than

said middle seal and said exterior seal, said base sealing edge further comprising an inner base edge extending generally vertically upward from said base rim; a middle base sealing edge extending substantially horizontally outward from said inner base edge; and an exterior base sealing edge extending substantially vertically downward from said middle base sealing edge;

and said lid sealing edge further comprising an inner lid edge extending generally vertically upward from said lid rim; a middle lid sealing edge extending substantially horizontally outward from said inner lid edge; and an exterior lid sealing edge extending substantially vertically downward from said middle lid sealing edge;

said locking lip protruding from said downward exterior lid sealing edge; wherein upon mating of said base and said lid, said base rim and said lid rim form said interior seal and said middle base sealing edge and said middle lid sealing edge form said middle seal and said exterior base sealing edge and said exterior lid sealing edge form said exterior seal.

2. A container according to claim 1, wherein at least a second base is stackable within said base.

3. A container according to claim 1, wherein at least a second lid is stackable within said lid.

4. A container according to claim 1, wherein the engagement of one of said exterior seal, said middle seal or said interior seal urges the engagement of the other two remaining seals.

5. A container having three seals, comprising:

a base having

a substantially planar bottom,

a base perimeter wall extending substantially vertically upward from said bottom,

a base rim extending substantially horizontally from said base perimeter wall, and

a base sealing edge having

an inner base edge extending generally vertically upward from said base rim,

a middle base sealing edge extending substantially horizontally outward from said inner base edge, and

an exterior base sealing edge extending substantially vertically downward from said middle base sealing edge;

and a lid having

a substantially planar top,

a lid perimeter wall extending substantially vertically downward from said top,

a lid rim extending substantially horizontally outward from said lid perimeter wall, and

a lid sealing edge an ached to said lid rim, and

a locking lip protruding from said sealing edge;

Claim 1

6,056,138

5

a middle base sealing edge extending substantially
horizontally from said inner base edge, and
an exterior base sealing edge extending substantially
vertically from said middle base sealing edge;
a lid having 5
a substantially planar top,
a lid perimeter wall extending substantially vertically
downward from said top,
a lid rim extending substantially horizontally from said
lid perimeter wall, and 10
a lid sealing edge having
an inner lid edge extending generally vertically from
said lid rim,
a middle lid sealing edge extending substantially
horizontally from said inner lid edge, and 15
an exterior lid sealing edge extending substantially
vertically from said middle lid sealing edge, and

6

a locking lip protruding from said exterior lid sealing
edge;
wherein, said base sealing edge and said lid sealing edge
are molded to be correspondingly mateable to each
other and upon mating of said bottom and said lid, said
base rim and said lid rim form an interior seal, said
middle base sealing edge and said middle lid sealing
edge form a middle seal and said exterior base sealing
edge and said exterior lip sealing edge form an exterior
seal, and
wherein, the engagement of one of said exterior seal, said
middle seal or said interior seal urges the engagement
of the other two remaining seals, and said interior seal
has a surface area greater than said middle seal and said
exterior seal.

* * * * *

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO: 6,056,138

DATED: May 2, 2000

INVENTOR(S): Jeffrey Chen

It is certified that an error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

In column 4, line 23 please change "an ached to" to
-- attached to--;

In column 4, line 27, please change "base scaling
edge" to --base sealing edge--;

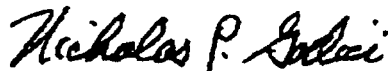
In column 5, line 16 please change "lid scaling edge"
to --lid sealing edge--; and

In column 6, line 1 please change "lid scaling edge"
to --lid sealing edge--.

Signed and Sealed this

Fifteenth Day of May, 2001

Attest:



NICHOLAS P. GODICI

Attesting Officer

Acting Director of the United States Patent and Trademark Office



US006196404B1

(12) **United States Patent**
Chen

(10) **Patent No.:** US 6,196,404 B1
 (45) **Date of Patent:** Mar. 6, 2001

(54) **TRIPLE SEAL CONTAINER WITH PROTRUSION**

(75) Inventor: **Jeffrey Chen**, Staten Island, NY (US)
 (73) Assignee: **Newspring Industrial Corp.**, East Newark, NJ (US)
 (*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(56) **References Cited**

U.S. PATENT DOCUMENTS

2,798,631	*	7/1957	Engel	220/266 X
4,124,141	*	11/1978	Armentrout et al.	220/783
4,555,043	*	11/1985	Bernhardt	220/783
4,844,263	*	7/1989	Hadtke	206/508
5,377,860	*	1/1995	Littlejohn et al.	220/780
5,553,701	*	9/1996	Jarecki et al.	220/780 X
5,758,791	*	6/1998	Mangla	220/780 X
6,056,138	*	5/2000	Chen	220/4.21

* cited by examiner

Primary Examiner—Nathan J. Newhouse

(74) *Attorney, Agent, or Firm*—Gibbons, Del Deo, Dolan, Griffinger & Vecchione

(21) Appl. No.: **09/483,350**

(22) Filed: **Jan. 14, 2000**

Related U.S. Application Data

(63) Continuation-in-part of application No. 09/120,985, filed on Jul. 22, 1998, which is a continuation-in-part of application No. 29/066,299, filed on Feb. 11, 1997, now Pat. No. Des. 415,420, and a continuation-in-part of application No. 29/081,160, filed on Dec. 23, 1997.

(51) Int. Cl.⁷ **B65D 41/16**

(52) U.S. Cl. **220/4.21; 220/780; 220/781; 220/792; 206/505**

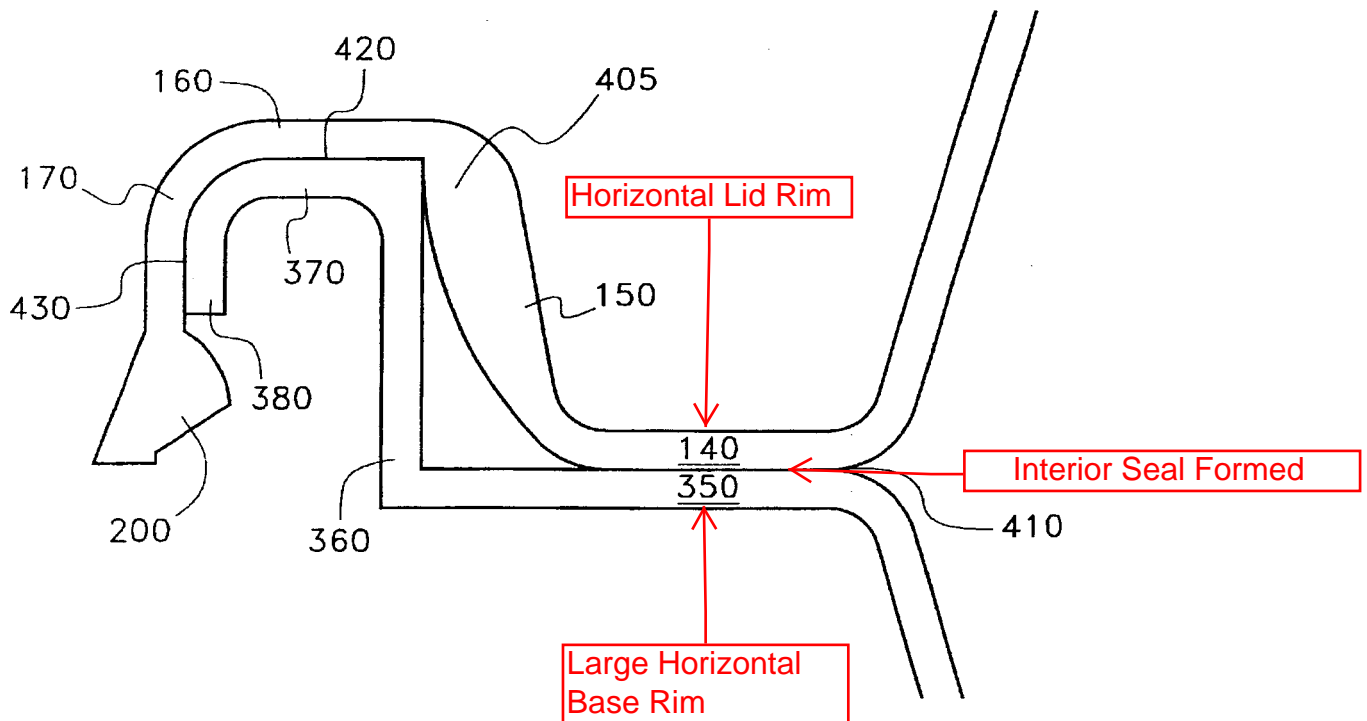
(58) **Field of Search** **220/4.21, 4.24, 220/780, 781, 782, 783, 790, 792, 796, 797, 798, 801, 802, 305; 206/503, 508, 505, 515, 519**

ABSTRACT

The present invention is a container for food. The container has a lid and a base which form a series of three self-reinforcing seals when mated. A protrusion on the lid reinforces the triple seal formed between the lid and base. The protrusion applies a force to the base, locking the lid and base together. The third seal has the largest surface area and acts as a first line of defense against food leakage out of the container and a last line of defense against the entry of contaminants into the container.

Description of Interior Seal

9 Claims, 6 Drawing Sheets

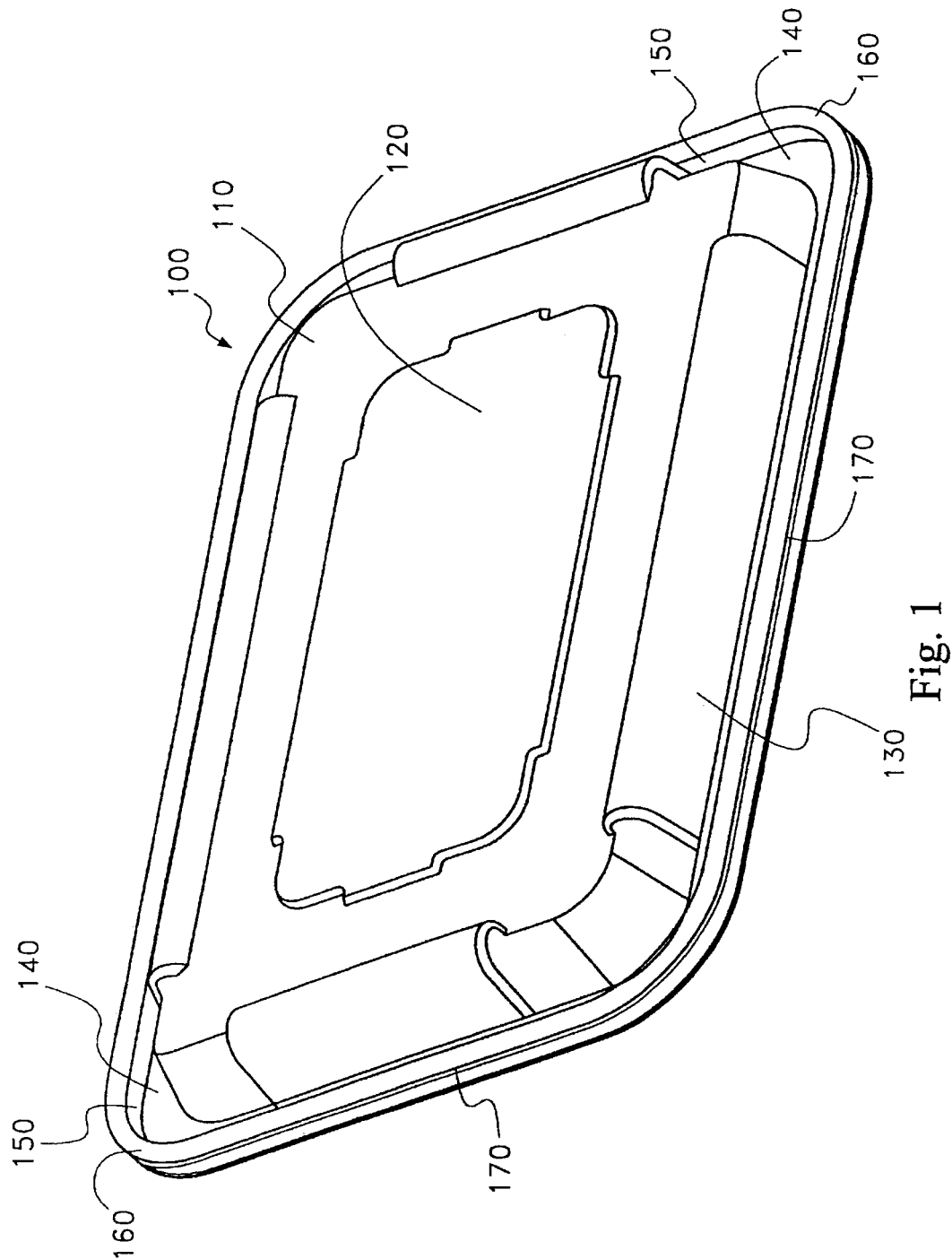


U.S. Patent

Mar. 6, 2001

Sheet 1 of 6

US 6,196,404 B1



U.S. Patent

Mar. 6, 2001

Sheet 2 of 6

US 6,196,404 B1

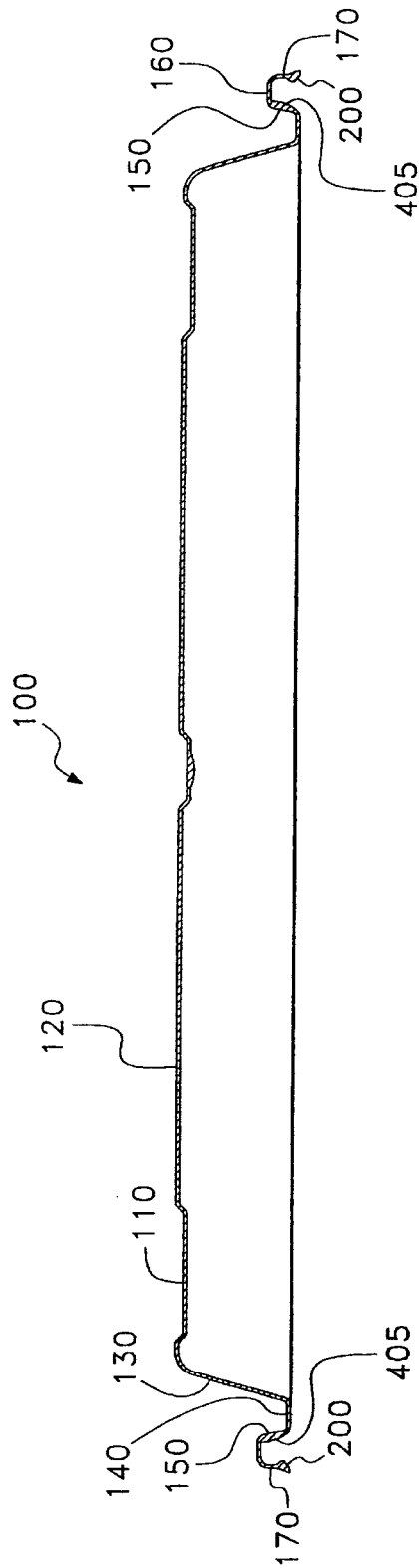


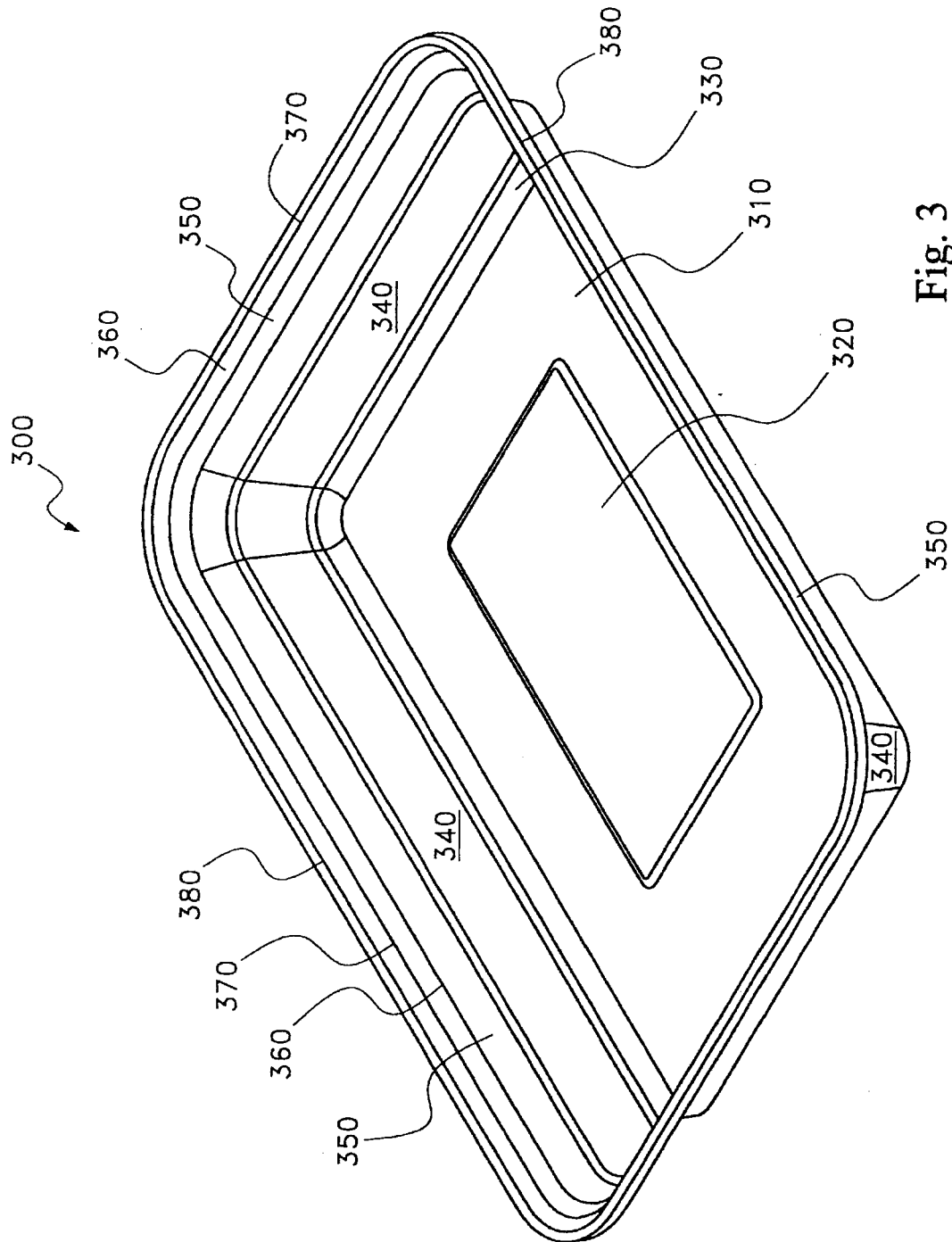
Fig. 2

U.S. Patent

Mar. 6, 2001

Sheet 3 of 6

US 6,196,404 B1



US 6,196,404 B1

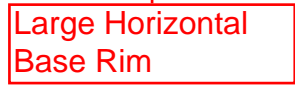


Fig. 4

U.S. Patent

Mar. 6, 2001

Sheet 5 of 6

US 6,196,404 B1

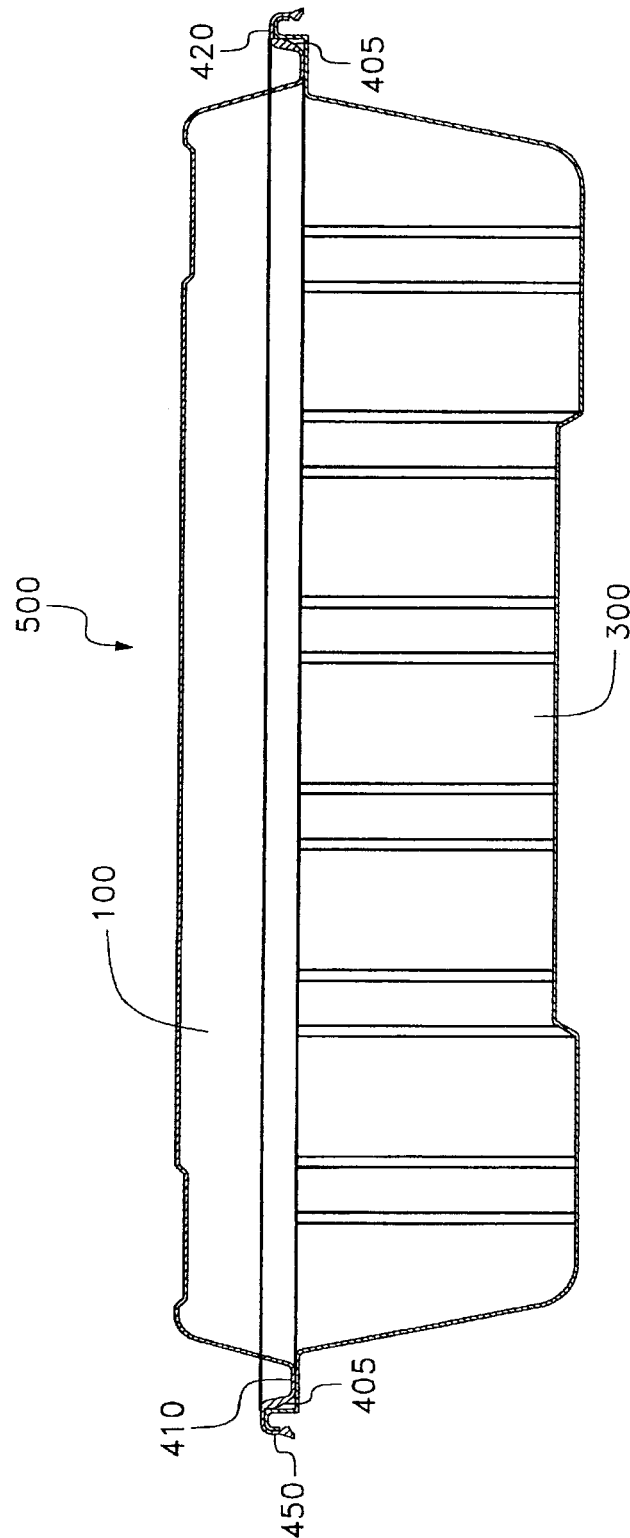


Fig. 5

U.S. Patent

Mar. 6, 2001

Sheet 6 of 6

US 6,196,404 B1

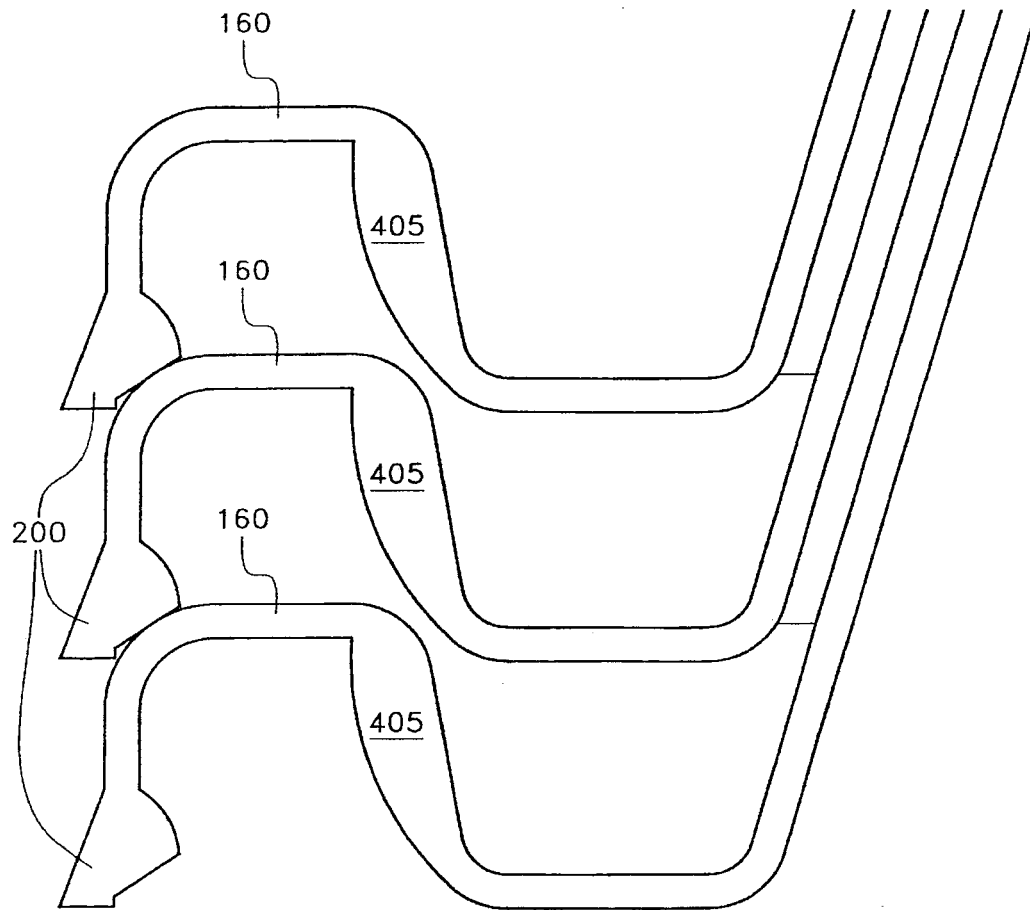


Fig. 6

US 6,196,404 B1

1

TRIPLE SEAL CONTAINER WITH PROTRUSION

RELATED APPLICATIONS

The present patent application is a continuation-in-part of U.S. patent application Ser. No. 09/120,985 (NIC-3) filed Jul. 22, 1998 and now pending in the United States Patent and Trademark Office, which is a continuation-in-part of U.S. patent application Ser. No. 29/066,299 (NIC-1) filed Feb. 11, 1997 now U.S. Pat. No. D 415,420 and U.S. patent application Ser. No. 29/081,160 (NIC-2) filed Dec. 23, 1997. The applications have common inventors and assignees and are incorporated herein by reference.

FIELD OF THE INVENTION

This invention generally relates to containers for storing and transporting food, and in particular to a sealing component formed between a base and a rim of a container for storing food.

BACKGROUND OF THE INVENTION

There are various container assemblies currently used in the "take-out" food industry which are capable of transporting and storing food for a temporary period. It is important that such containers may be sealed to prevent the leakage and/or spoilage of food while in transport or storage. Currently, there are various designs available for such a purpose in the food industry.

An example of such a container consists of a lid and base portion that, upon mating form a seal to prevent leakage and spoilage. These containers are made of various materials including an aluminum base having a cardboard lid and a plastic base with a plastic lid. Specifically, an aluminum base forms a seal with the lid by the folding of the base around the peripheral to grasp the lid. This seal is not effective at preventing the food from leaking out of the container through the seal, especially when liquid is contained within the container. In addition, such containers are inconvenient because the assembly and disassembly proves to be both time consuming and messy.

Containers which consist of a base and lid made of plastic typically have only one or two seals to prevent the flow of food out of the container area and to prevent the introduction of bacteria and air into the container. With such containers, however, food leakage can occur when one or both seals are broken. Typical double seal containers provide two identical seals, one interior to the other. The seals have small surface areas to prevent the flow of food, liquids and/or air. Disadvantageously, the small surface area of the seals results in failure of the seal more often than acceptable. In addition, double seal containers typically have the two seals located right next to each other, so that if food has leaked through one seal, it is highly likely that the food will leak through the other. In other words, the placement of the seals on the currently available containers does not allow the seals to reinforce each other because they are close in proximity.

There are also available certain containers having three seals. Again, as with the double and single seal containers, the surface area of the seals is small and the proximity of the seals is close. Therefore, the likelihood of failure of these seals is great.

Yet another example of a container currently available in the "take-out" food industry are the traditional Chinese Food take-out containers. These containers are made completely of cardboard. These containers form a seal on top by the

2

folding over of interlocking flaps. This seal is not airtight and thus, leakage is a common occurrence. In addition, food often leaks out of the bottom of such containers because the bottom is composed of one piece of cardboard folded to form the container. Thus, there are gaps in the container, along the folds. In addition, the cardboard of the container weakens easily and is not effective for storing food that may be left over.

Considering the great number of containers in use in the take-out industry, there is a need for a container having a seal which prevents food leakage and spoilage. In addition, there is a need for a container which may be easily and readily assembled and disassembled. In addition, the container must be of such quality such that it is capable of storing foods for some length of time. Yet another desirable feature is for a container that may be easily and compactly stored.

SUMMARY OF THE INVENTION

The present invention is a triple seal container having a protrusion on the lid which reinforces the triple seal formed between the lid and base. The invention uses a series of three self-reinforcing seals. The protrusion applies a force to the base, locking the lid and base together. The third seal has the largest surface area and acts as a first line of defense against food leakage out of the container and a last line of defense against the entry of contaminants into the container.

The present invention overcomes the disadvantages of the prior art because it is easily assembled and disassembled while having a triple seal reinforced by the protrusion. In addition, such a triple seal is excellent for protecting food while in transport and storing such food in the container for a long period of time. The invention also provides for an area for easy grasping of the container without burning the user's fingers, if the contents of the container are hot.

In an exemplary embodiment of the present invention, the container comprises a base and a lid which, when mated, form three seals, two of which are reinforced by the protrusion. The interior seal has a surface area larger than the middle and exterior seals. The protrusion is located on the lid and urges the base to contact with the lid at such a point, resulting in the reinforcement of the middle and exterior seals.

Advantageously, the use of three seals and a protrusion on the container does not preclude easy assembly of the lid and base. The ability to break the seal, and remove or introduce food to the container, then close all three seals is easily accomplished with the present invention through the application of a small force. The closure involves no more than simple pressure on the lid and the sealing of the exterior or middle seal ensures the closure of the remaining seals.

The container of the present invention are same size stackable, with one base fitting into the base of the next container, and the lids acting in the same fashion. The invention is stackable when in the fully assembled position as well. This dramatically reduces the storage space required to keep large quantities of the invention. The present invention is, therefore, a safe, easy to use container that can be used in the food preparation and distribution industries and in the private home.

BRIEF DESCRIPTION OF THE DRAWINGS

For a detailed understanding of the present invention, reference should be made to the following detailed description taken in conjunction with the accompanying drawings wherein:

US 6,196,404 B1

3

FIG. 1 is a perspective view of the lid;
 FIG. 2 is a side view of the lid;
 FIG. 3 is a perspective view of the base;
 FIG. 4 is an enlarged view of the seals between the lid and the base;
 FIG. 5 is a side view of the fully assembled container including a base and a lid; and
 FIG. 6 is an enlarged view of three lids, stacked one on top of the next;

DETAILED DESCRIPTION

FIGS. 1 and 2 show a lid 100 having a substantially planar top portion 110 with a slightly raised, substantially planar region 120 parallel to a top portion 110. A peripheral wall 130 extends substantially vertically downward from the top portion 110. A rim 140 extends substantially horizontally from the peripheral wall 130. An inner edge 150 extends generally perpendicularly upwards from the rim 140. A protrusion 405 (FIG. 4) is attached to the inner edge 150. A middle sealing edge 160 is connected substantially perpendicularly to the inner edge 150. From the middle sealing edge 160, an exterior sealing edge 170 stretches generally downwards. A locking lip 200 protrudes from the exterior sealing edge 170.

Referring now to FIG. 3, a base 300 is illustrated having a substantially planar bottom portion 310, including a slightly raised, substantially planar region 320, that is parallel to bottom portion 310. Connected to the bottom portion 310, is a convex extension surface 330, which runs along the perimeter of base 300. From convex extension surface 330, a perimeter wall 340 extends substantially vertically upwards. The perimeter wall 340 ends in a generally horizontally extending rim 350. Rim 350 is integrally connected to a generally perpendicular upwardly extending inner edge 360. A middle sealing edge 370 extends substantially horizontally from the inner edge 360 and an exterior sealing edge 380 extends substantially vertically downwards from the middle sealing edge 370.

Given the above structure, the interaction between the various lid and base components are now described with respect to FIGS. 4 and 5. FIG. 4 shows an enlarged view of the three seals and FIG. 5 shows a fully assembled container 500. This interaction creates the triple seal formation of the present invention.

Lid 100 is pressed in a downward motion onto base 300. Lid 100 and base 300 are aligned by inner edge 150 and protrusion 405, with locking lip 200 contacting downwardly exterior base sealing edge 380.

Upon the application of downward pressure on the lid 100, locking lip 200 flexes exterior sealing edge 170 outwards. Further downward pressure on the lid 100 pushes the locking lip 200 past the end of base exterior sealing edge 380. Locking lip 200 then moves inwardly with lid exterior sealing edge 170 flexing inwardly to contact exterior base sealing edge 380. Upon the mating of the lid 100 and base 300, a container as shown in FIGS. 4 and 5 is assembled.

In the fully assembled container 500, an interior seal 410 is formed between lid rim 140 and base rim 350, a middle seal 420 is formed between lid middle sealing edge 160 and base middle sealing edge 370, and an exterior seal 430 is formed between lid exterior sealing edge 170 and base exterior sealing edge 380. Upon this mating of the lid 100 and the base 300, the protrusion 405 applies a force to the base inner edge 360. This force, in turn, pushes the base middle sealing edge 370 against the lid middle sealing edge

4

160, reinforcing the middle seal and pushes the base exterior sealing edge 380 against the lid exterior sealing edge 170 reinforcing the exterior seal. In addition, the seals are self-reinforcing because the engagement of any one of the three seals, will urge the engagement of the two remaining seals. Although the container 500 is rectangular in configuration, it may be any variety of shapes, for example, round, square, oval, or oblong.

In addition to acting as seals, the interior seal 410, middle seal 420 and exterior seal 430 are conveniently located on the container 500 so that this area, as a whole may be grasped to carry the container. This proves especially helpful when the contents of the container 500 are hot or when the container 500 is removed from the microwave.

In the exemplary embodiment of the invention, the interior seal 410 is larger than either the exterior seal 430 or the middle seal 420. With the increased surface area, this interior seal 410 acts as a larger first barrier against leakage from the container 500, and a superior final barrier against bacterium and contamination.

Referring now to FIGS. 1 and 6, it can be seen that the lids 100, and bases 300, can be easily stacked in nested columns, lid upon lid and base upon base. The lids 100 are stackable since the locking lip 200 rests directly upon the middle sealing edge 160 of the next lid. The bases are also stackable since the planar bottom portion 310 of one base rests upon the planar bottom portion 310 of the next base. In addition, base rim 350 provides support for the next base rim 350. The stackability of the lids and bases provides a minimal stacking height and minimizes the required storage area. In addition, the top portion 110 and the substantially planar region 120 of the lid 100 is fitted with the bottom portion 320 and the substantially planar region 320 of the base 300 so that the fully assembled container 500 may be stacked securely one on top of the other.

In an alternative embodiment of the present invention, the container may take on an oval, or circular configuration. The critical components of both the lid 100 and base 300 remain substantially identical to those described herein.

While the invention has been described with reference to preferred embodiments, it should be appreciated by those skilled in the art that the invention may be practiced, otherwise than as specifically described herein without departing from the scope of the invention. It is, therefore, to be understood that the scope of the invention be limited only by the appended.

What is claimed is:

1. A container having three seals, comprising:

a base having

a substantially planar bottom,

a base perimeter wall extending substantially vertically upward from said bottom,

a base rim extending substantially horizontally outward from said base perimeter wall, and

a base sealing edge attached to said base rim; and

a lid having

to a substantially planar top,

a lid perimeter wall extending substantially vertically downward from said top,

a lid rim extending substantially horizontally outward from said lid perimeter wall,

a lid sealing edge attached to said lid rim,

a protrusion attached to said lid sealing edge, and

a locking lip protruding from said sealing edge;

wherein said base sealing edge and said lid sealing edge are molded to be correspondingly mateable to each

← Claim 1 (continued on the next page)

End of Claim 1

US 6,196,404 B1

5

other and upon mating said base sealing edge and said lid sealing edge form a middle seal and an exterior seal and said base rim and said lid rim form an interior seal and further wherein said protrusion pushes said base sealing edge against said lid sealing edge.

2. The container according to claim 1, wherein said interior seal has a surface area greater than said middle seal and said exterior seal.

3. The container according to claim 1, wherein said interior seal has a surface area two times greater than the surface area of said middle seal and three times greater than the surface area of said exterior seal.

4. The container according to claim 1, wherein at least a second base is stackable within said base.

5. The container according to claim 1, wherein at least a second lid is stackable within said lid.

6. The container according to claim 1, wherein at least a second container is stackable on said container.

7. The container according to claim 1, said base sealing edge further comprising:

an inner base edge extending generally vertically upward from said base rim;

a middle base sealing edge extending substantially horizontally outward from said inner base edge; and

an exterior base sealing edge extending substantially vertically downward from said middle base sealing edge; and

said lid sealing edge further comprising:

an inner lid edge extending generally vertically upward from said lid rim, wherein said protrusion is attached to said inner lid edge;

a middle lid sealing edge extending substantially horizontally outward from said inner lid edge; and

an exterior lid sealing edge extending substantially vertically downward from said middle lid sealing edge, said locking lip protruding from said downward exterior lid sealing edge;

wherein upon mating of said bottom and said lid, said protrusion pushes said inner base edge outwards so that said base rim and said lid rim form said interior seal and said middle base sealing edge and said middle lid sealing edge form said middle seal and said exterior base sealing edge and said exterior lip sealing edge form said exterior seal.

8. The container according to claim 7, wherein the engagement of one of said exterior seal, said middle seal or

6

said interior seal urges the engagement of the other two remaining seals.

9. The container having three seals, comprising:

a base having

a substantially planar bottom,

a base perimeter wall extending substantially vertically upward from said bottom,

a base rim extending substantially horizontally from said base perimeter wall, and

a base sealing edge having

an inner base edge extending generally vertically from said base rim,

a middle base sealing edge extending substantially horizontally from said inner base edge, and

an exterior base sealing edge extending substantially vertically from said middle base sealing edge;

a lid having

a substantially planar top,

a lid perimeter wall extending substantially vertically downward from said top,

a lid rim extending substantially horizontally from said lid perimeter wall, and

a lid sealing edge having

an inner lid edge extending generally vertically from said lid rim,

a protrusion attached to said inner lid edge,

a middle lid sealing edge extending substantially horizontally from said inner lid edge, and

an exterior lid sealing edge extending substantially vertically from said middle lid sealing edge, and

a locking lip protruding from said exterior lid sealing edge;

wherein, said base sealing edge and said lid sealing edge are molded to be correspondingly mateable to each other and upon mating of said base and said lid, said base rim and said lid rim form said interior seal, said middle base sealing edge and said middle lid sealing edge form said middle seal and said exterior base sealing edge and said exterior lip sealing edge form said exterior seal, and

wherein, the engagement of one of said exterior seal, said middle seal and said interior seal urges the engagement of the other two remaining seals, and said interior seal has a surface area greater than said middle seal and said exterior seal.

* * * * *

Exhibit C-3A



Exhibit C-3B



Exhibit C-3C



AEP Figure

