



Provided by:  
Overhauser Law Offices LLC  
[www.iniplaw.org](http://www.iniplaw.org)  
[www.overhauser.com](http://www.overhauser.com)

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

FILED  
U.S. DISTRICT COURT  
INDIANAPOLIS DIVISION

SEP 10 PM 3:40

SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BEILES  
CLERK

CSP TECHNOLOGIES, INC.,

Plaintiff,

v.

CLARIANT PRODUKTE DEUTSCHLAND  
GMBH, SÜD-CHEMIE, INC., and AIRSEC  
S.A.S.,

Defendants.

4:13-cv-0142 TWP-WGH

Civil Action No. \_\_\_\_\_

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff CSP Technologies, Inc. ("CSP"), by and through its undersigned counsel, alleges  
as follows:

INTRODUCTION

1. CSP comes before this Court again due to the Defendants Clariant Produkte Deutschland GmbH, Süd-Chemie, Inc. and Airsec S.A.S. (referred to herein collectively as "Defendants") willful infringement of CSP's patented technology relating to packaging for, among other things, the diagnostic test strip market.

2. This Court previously determined that Defendants' products for packaging of, for example, diagnostic test strips, infringed two of CSP's patents. *See* 4:03-cv-00003-SEB-WGH Doc. No. 606. After this Court found that CSP's patents were valid and infringed by Defendants' products, the parties settled the case and this Court entered a Consent Order, retaining jurisdiction and enjoining the Defendants from infringing the asserted patents in that case. *See id.* at Doc. No. 636, ¶ 10 (enjoining Defendant Süd-Chemie, Inc. along with "those in active concert or participation with them (including Süd-Chemie AG and Airsec S.A.)....").

3. Following the resolution of the aforementioned case, Defendants began selling packaging for diagnostic test strips again using CSP's patented technology. On March 14, 2011, CSP filed suit in this Court charging Defendants with willful infringement of United States Patent No. 7,537,137. That case is currently pending in this Court before the Honorable Richard L. Young. *CSP Technologies, Inc. v. Sud-Chemie AG, et al*, 11-cv-00029-RLY-WGH.

4. On September 10, 2013, United States Patent No. 8,528,778, titled "Resealable Moisture Tight Container Assembly For Strips And The Like Having A Lip Snap Seal," issued to CSP (the "778 patent"). Defendants are selling packaging for diagnostic test strips that infringes CSP's '778 patent. Defendants' willful infringement of CSP's patent rights will cause CSP irreparable harm and substantial monetary damages. CSP seeks an injunction and treble damages for Defendants' repeated refusal to respect CSP's intellectual property rights.

#### **THE PARTIES**

5. CSP is a corporation organized under the laws of the State of Delaware and has a principal place of business at 960 W. Veterans Blvd., Auburn, Alabama.

6. On information and belief, Clariant Produkte Deutschland GmbH ("Clariant") is a German company with a principal place of business at Industriepark Höchst, Frankfurt, Germany, 65926. On information and belief, Süd-Chemie AG, a defendant in the litigations referred to in paragraphs 3 and 4 above, was merged into Clariant on July 1, 2012.

7. On information and belief, Süd-Chemie, Inc., a subsidiary of Clariant, is a corporation organized under the laws of the State of Delaware with a principal place of business at 1600 West Hill Street, Louisville, Kentucky. Süd-Chemie, Inc. also has multiple sales and manufacturing offices throughout the United States.

8. On information and belief, Airsec S.A.S., a subsidiary of Clariant, is a French company with a principal place of business at 6 rue Louise Michel, 94600 Choisy-le-Roi, France.

### **JURISDICTION AND VENUE**

9. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

10. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

11. On information and belief, this Court has personal jurisdiction, general and specific, over Defendants because they have sufficient minimum contacts to establish personal jurisdiction in this district. Specifically, Defendants have availed themselves of the privilege of conducting activities within this judicial district, have systematic and continuous contacts with this judicial district and regularly transact business within this jurisdictional district because, for example, Defendants' products are sold in this district and Defendants derive substantial revenues from sales in this district.

12. For example, Defendants have placed their products, including products CSP accuses of infringement in this litigation, into the stream of commerce knowing and/or reasonably expecting that such products will be used, offered for sale, marketed, sold, distributed, and/or imported throughout the United States, including in this judicial district.

13. Defendant Süd-Chemie, Inc. has also previously initiated patent litigation in this district related to its packaging products that are used with, for example, diagnostic test strips.

14. Although it is believed that the extent of Defendants' contacts in this district are extensive, the extent of Defendants' contacts in this district will be established after a reasonable opportunity for discovery.

15. Venue is proper in this district under 28 U.S.C. §§ 1391 (b), (c) and (d) and 28 U.S.C. § 1400(b).

### **BACKGROUND**

16. CSP is an innovator in the field of plastic product packaging. For example, CSP develops, manufactures, distributes and sells innovative products that enhance the stability and shelf life of package contents, such as diagnostic test strips.

17. The United States Patent and Trademark Office has granted numerous patents to CSP for its innovative work in the field of plastic product packaging. These patents include patents directed towards desiccant entrained polymers and other sealing technology incorporated into product packaging. These technologies are aimed at creating a moisture-free environment for packaged product.

18. In addition to receiving patents on its innovative packaging technology, the United States Patent and Trademark Office also named one of CSP's desiccant entrained polymers patents as the most outstanding new patent of the year in the area of chemistry and chemical engineering.

19. Defendants are direct competitors of CSP in the field of product packaging for such things as diagnostic test strips.

20. On information and belief, Defendants have been unable to penetrate the market for packaging of diagnostic test strips without copying CSP's patented technology.

21. On September 10, 2013, the United States Patent and Trademark Office duly and legally issued United States Patent No. 8,528,778, titled "Resealable Moisture Tight Container Assembly For Strips And The Like Having A Lip Snap Seal" (the "778 patent"). A copy of the 778 patent is attached hereto as Exhibit A.

22. CSP owns all right, title and interest in the 778 patent.

23. On information and belief, in order to enter the diagnostic test strip packaging market, Defendants were again forced to use CSP's patented technology, *e.g.* technology covered by the 778 patent, to create moisture-free packaging for diagnostic test strips.

24. Specifically, Defendants have engaged in and intend to engage in, the manufacture, distribution, marketing, offering for sale, sale and importation of vials for the packaging of diagnostic strips that infringe one or more claims of the 778 patent (referred to herein as "the accused vial products").

25. Defendants' accused vial products include vials that incorporate Defendants' Advanced Desiccant Polymer (sometimes referred to as ADP®) and/or their 2AP® desiccant polymer technology. Defendants also sometimes refer to the accused vial products as Handy Active Tubes® or HAT Tubes®.

26. For example, on information and belief, one of Defendant Clariant's business units, Süd-Chemie Performance Packaging, manufactures the accused vial products through Defendant Airsec S.A.S., a company owned by Defendant Clariant. On information and belief, Defendants then sell the accused vial products to at least LifeScan. LifeScan fills the accused vial products with its diagnostic test strips, including at least its One Touch Ultra Test Strips. LifeScan makes, uses, offers to sell, sells and/or imports its One Touch Ultra Test Strips product (which incorporates the accused vial products) throughout the United States, including in this judicial district.

27. On information and belief, Defendants know that LifeScan is importing and selling and intends for LifeScan to import and sell articles that incorporate the accused vial products in the United States.

28. On information and belief, Defendants' business unit responsible for making, using, marketing, offer for sale, selling and/or importing the accused vial products also has sales and manufacturing offices in the United States.

29. Defendants' accused vial products constitute a material part of the invention claimed in the 778 patent.

30. On information and belief, Defendants had notice and knowledge of the application that led to the 778 patent prior to the filing of this suit. On information and belief, at least as of the filing of this suit, Defendants have had notice and knowledge of the 778 patent and that their accused vial products infringe the 778 patent. On information and belief, Defendants' intend to continue infringing activities despite this notice and knowledge.

31. The accused vial products are not a staple article or commodity of commerce suitable for substantial noninfringing use.

**COUNT ONE**  
**PATENT INFRINGEMENT**

32. CSP incorporates by reference the allegations of paragraphs 1-31 above, as if fully alleged herein.

33. In contravention of one or more subsections of 35 U.S.C. § 271, Defendants, without authority, have and are continuing to directly infringe, contributorily infringe and/or actively induce infringement of one or more claims of the 778 patent, either literally or under the doctrine of equivalents, by, including but not limited to, making, using, offering to sell, selling or importing the accused vial products in or into the United States and/or causing the accused vial products to be made, used, offered for sale, sold in or imported into the United States.

34. At least as of the filing of this suit, Defendants have actual notice of the 778 patent and are infringing the 778 patent with knowledge of CSP's patent rights. The filing of this Complaint also constitutes notice to Defendants of the 778 patent under 35 U.S.C. § 287.

35. Defendants' infringing conduct described above is willful and deliberate.

36. CSP has been damaged by Defendants' infringing activities and will continue to be so damaged unless enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, CSP respectfully requests entry of judgment in its favor and the following relief, including:

A. That Defendants be adjudged to have infringed one or more claims of the 778 patent;

B. That Defendants and all related entities and their officers, agents, employees, representatives, servants, successors, assigns and all persons in active concert or participation with any of them, directly or indirectly, be preliminarily and permanently enjoined from making, using, offering to sell, selling or importing the infringing products in the United States or causing the infringing products to be made, used, offered for sale, sold in or imported into the United States;

C. That Defendants account for damages sustained by CSP as a result of Defendants' infringement of the 778 patent, including both pre- and post-judgment interest and costs as fixed by this Court under 35 U.S.C. § 284;

D. That Defendants be adjudged to have willfully and deliberately infringed the 778 patent and that the damages resulting from Defendants' willful and deliberate violation of the patent laws be trebled pursuant to 35 U.S.C. § 284;

E. That this case be declared an exception case within the meaning of 35 U.S.C. § 285 and that CSP be awarded its reasonable attorneys' fees;

F. That CSP be awarded its costs, attorneys' fees, and expenses incurred in this action pursuant to applicable state and federal laws; and

G. That the Court grant CSP such other and further relief as the Court may deem just and proper.


**JURY DEMAND**

CSP demands a trial by jury on all issues so triable.



Dated: September 10, 2013

Respectfully submitted,



Edward W. Harris, III (7485-49)

Abram B. Gregory (25602-49)

TAFT STETTINIUS & HOLLISTER LLP

One Indiana Square, Suite 3500

Indianapolis, Indiana 46204

Tel: (317) 713-3500

Fax: (317) 713-3699

[eharris@taftlaw.com](mailto:eharris@taftlaw.com)

[agregory@taftlaw.com](mailto:agregory@taftlaw.com)

James R. Nuttall

John L. Abramic

STEPTOE & JOHNSON LLP

115 South LaSalle Street, Suite 3100

Chicago, IL 60603

Tel: (312) 577-1300

Fax: (312) 577-1370

[jnuttall@steptoe.com](mailto:jnuttall@steptoe.com)

[jabramic@steptoe.com](mailto:jabramic@steptoe.com)

*Attorneys for Plaintiff CSP Technologies, Inc.*