

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION



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_____)	
CLOSURE SYSTEMS)	
INTERNATIONAL INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
NOVEMBAL USA INC.,)	
)	
Defendant.)	
_____)	

COMPLAINT

NOW COMES, by and through its undersigned attorneys, Plaintiff, Closure Systems International Inc. (“CSI”), who alleges as its complaint against Defendant, Novembal USA Inc. (“Novembal”) as follows:

PRELIMINARY STATEMENT

1. This is a case of a stolen invention in which Novembal filed for numerous United States design patents in its own name, namely, U.S. Design Patent Nos. D836,442 (“the ’442 patent”) (**Exhibit 1**) and D838,171 (“the ’171 patent”) (**Exhibit 2**) (“the Patents In Suit”), even though it obtained those designs from CSI, who had invented them years before Novembal filed for its ill-gotten patents and supplied them directly to Novembal’s customer.
2. CSI seeks correction of inventorship under 35 U.S.C. § 256 of the Patents In Suit to remove the name of the improper Novembal inventors and name, instead, the correct inventors who were, at the time, employed by and had an obligation to assign their inventions to, CSI.

THE PARTIES

3. CSI is a Delaware corporation having its principal place of business at 7820 Innovation Blvd., Indianapolis, IN 46278.

4. Novembal is a Delaware corporation having its principal place of business at 3 Greek Lane, Edison, NJ 08817.

JURISDICTION AND VENUE

5. This is a matter arising under the patent laws, 35 U.S.C. § 1, *et seq.*, and in particular, for correction of inventorship under 35 U.S.C. § 256.

6. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338(a) (patents).

7. This Court also has jurisdiction to declare the rights of the parties under 28 U.S.C. § 2201(a) because an actual case or controversy exists as the proper inventorship of the Patents In Suit, and because Novembal has threatened action against CSI for infringement of the Patents In Suit that is imminent and real, and there is substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

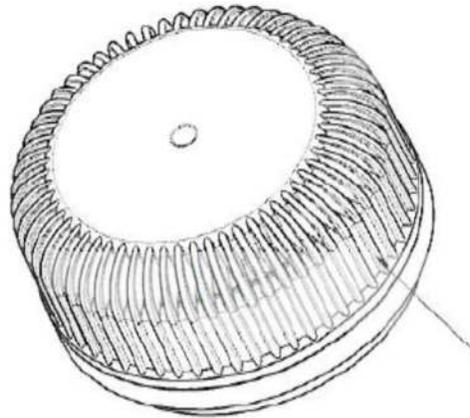
8. This Court has general and specific personal jurisdiction over Novembal because, *inter alia*, Novembal supplies products in this District, purposely directed its cease and desist correspondence to a resident of this District (i.e., CSI), the claim relates to the assertions made by Novembal in that correspondence, and it is reasonable and fair to subject Novembal to jurisdiction in this District.

9. Venue is proper in this District under at least 28 U.S.C. § 1391(b)(2) because the Patents In Suit were conceived of and developed in this District, and therefore a substantial part of the events or omissions giving rise to the claim occurred in this District.

FACTS COMMON TO ALL COUNTS

10. On or about January 27, 2011, CSI employees, Arnold Benecke, Bill Moll and John Edie developed a closure for bottle in response to a request from its customer, Nestle Waters (“Nestle”) (referred to as the “Option 2 CSI Closure”). CSI is an assignee of those employees’ inventions pursuant to assignments from the inventors. (See **Exhibits 3, 4 and 5.**)

11. A drawing evidencing that closure, dated January 27, 2011 (**Exhibit 6**) depicts the Option 2 CSI Closure:



12. On March 9, 2011, CSI e-mailed to Nestle (**Exhibit 7**) a presentation (**Exhibit 8**) concerning the Option 2 CSI Closure (as well as a different option), stating in relation to the Option 2 CSI Closure that “Prototypes molded by April 1” and “Small quantity of slit samples will be sent by April 13”:

Wrap Over Knurl Concept



- Weight estimated at 1.55 g
- Prototypes molded by April 1
- Small quantity of slit samples will be sent by April 13
- Can be in a position to do a box trial by 4/20 if they fit with existing chucks
 - If different chucks are required, will design, manufacturer, and be able to trial by 4/29

13. On March 10, 2011, CSI e-mailed to Nestle (**Exhibit 7**) the part drawing of the Option 2 CSI Closure, 240059-OP2-DWG.pdf (**Exhibit 6**).

14. On or about June 2011, Nestle trialed a different CSI closure, but took delivery of approximately one hundred samples of Option 2 CSI Closures.

15. Representatives from CSI attended those trials, along with representatives from at least two other CSI competitors, including Novembal.

16. Each of the closure manufacturers at the trial, including CSI and Novembal, witnessed the trials of each others' closures and saw all of each others' sample closures provided to Nestle.

17. Nestle did not award the business to CSI, and instead awarded the business to Novembal.

18. In early 2018, Nestle approached CSI to replace Novembal as a supplier, and asked about supplying the Option 2 CSI Closure.

19. CSI began supplying Nestle with a closure similar to, but slightly different in design to the Option 2 CSI Closure (“New Closures”).

20. Over the course of the next several months, CSI delivered those New Closures to Nestle to trial at Nestle’s facilities.

21. On or about May 24, 2019, Nestle informed CSI that Novembal had informed Nestle that the New Closures infringed one or more Novembal patents.

22. On May 30, 2019, Novembal sent CSI a letter (**Exhibit 9**) demanding CSI cease and desist supplying the New Closures to Nestle on the grounds that the New Closures infringed the ’442 patent.

23. The ’442 patent is a design patent, filed August 17, 2018, with a parent filing date of January 4, 2018, naming inventors Christopher Wood and Michel Luzzato of Novembal.

24. Those dates are precisely when Nestle would have had in its possession the New Closures made by CSI and begun trialing such New Closures with the intent to replace Novembal closures with New Closures made by CSI.

25. The closure depicted in the ’442 patent is identical to the Option 2 CSI Closure:

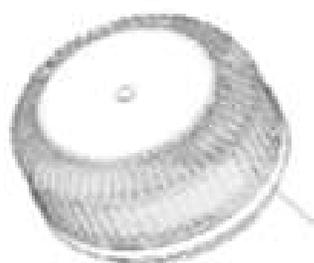


CSI Drawing Dated 1/27/2011
(sent to Nestle March 10, 2011,
see attached 240059-OP2-DWG.pdf)



the ’442 patent
(priority date January 4, 2018)

26. The drawings from the other Patent In Suit are also identical to the Option 2 CSI Closure:



CSI Drawing Dated 1/27/2011
(sent to Nestle March 10, 2011,
see attached 240059-OP2-DWG.pdf)



U.S. Des. Patent
838,171 (Exhibit 6)

27. On July 11, 2019, CSI informed Novembal that it believed Novembal had improperly claimed inventorship of the '442 patent and presented Novembal with documentary evidence that CSI had disclosed the Option 2 CSI Closure to Nestle in 2011. (**Exhibit 10**).

28. On August 20, 2019, Novembal disputed that CSI's disclosure to Nestle was prior art, and stated that it had "identified no evidence substantiating or consistent with [CSI's] suggestions that CSI's 2011 design or its confidential disclosure to Nestle was ever communicated to Novembal. To the contrary, Novembal's investigation confirmed that Novembal began developing its cap design before 2011." (**Exhibit 11**).

29. On that same day, CSI requested that Novembal "provide documentary evidence of" Novembal's conception in 2011, as CSI had done. (**Exhibit 12**).

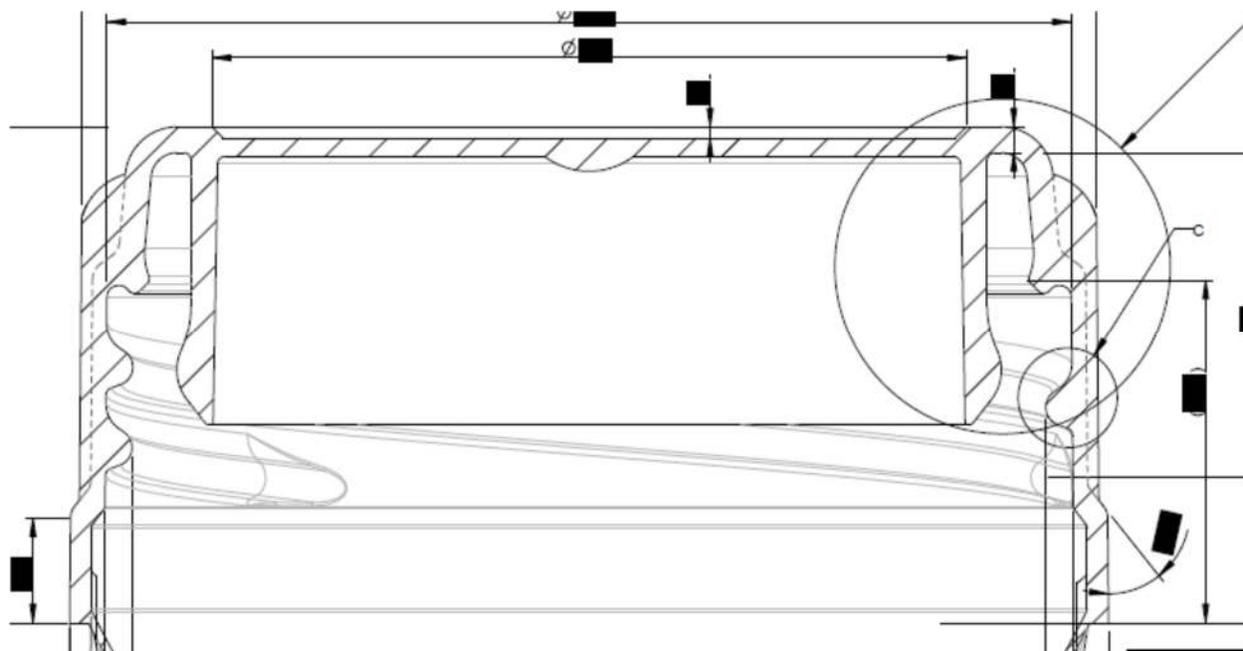
30. Despite CSI providing clear evidence that it had first invented the designs, and stating that it appeared Novembal obtained those designs from Nestle, Novembal curiously responded that "As to the date of conception of the '442 patent, this is not at issue. There is no

reason to disclose Novemba's internal documents on this." (**Exhibit 12**). It did not provide documentary evidence at that time.

31. On August 29, 2019, Novemba reconsidered disclosing its conception documents, and sent a drawing dated 2010 that purported to show its conception of the closure, saying "In an effort to move this forward and to help assure CSI, we attach information (redacted) from 2010 regarding Novemba's earlier development." (**Exhibit 13**).

32. Novemba's alleged 2010 drawing is not even close to the patented design, or the Option 2 CSI Closure.

33. The drawing depicts a cross section of a completely different cap, and does not show the patented design (i.e., the outside knurl pattern) at all (**Exhibit 14**):



34. As shown, the knurl does not go all the way to the top of the closure, as in the '442 patent. In fact, the drawing is entitled "recessed shoulder." (**Exhibit 14**).

35. It is apparent that Novemba cannot substantiate its independent invention of the Patents In Suit, and that all of the evidence points to those patents having been derived from CSI.

36. Nonetheless, Novemba continues to demand that CSI cease manufacture of the New Closures. (**Exhibit 11**).

COUNT I – CORRECTION OF INVENTORSHIP OF THE '442 PATENT

37. CSI incorporates paragraphs 1 through 36 above as if alleged fully herein.

38. The subject matter of the Patents In Suit was invented by Arnold Benecke, Bill Moll and John Edie of CSI.

39. The Patents In Suit name the wrong inventors, to wit, Christopher Wood and Michel Luzzato.

40. Pursuant to 35 U.S.C. § 256(a) and (b), CSI requests this Court declare the inventorship of the '442 patent to be have made in error, and order the Director of the U.S. Patent and Trademark Office to issue a certificate correcting inventorship of the Patents In Suit to remove Messrs. Wood and Luzzato and replace them with Messrs. Benecke, Moll and Edie.

COUNT II – CORRECTION OF INVENTORSHIP OF THE '171 PATENT

41. CSI incorporates paragraphs 1 through 36 above as if alleged fully herein.

42. The subject matter of the Patents In Suit was invented by Arnold Benecke, Bill Moll and John Edie of CSI.

43. The Patents In Suit name the wrong inventors, to wit, Christopher Wood and Michel Luzzato.

44. Pursuant to 35 U.S.C. § 256(a) and (b), CSI requests this Court declare the inventorship of the '171 patent to be have made in error, and order the Director of the U.S. Patent and Trademark Office to issue a certificate correcting inventorship of the Patents In Suit to remove Messrs. Wood and Luzzato and replace them with Messrs. Benecke, Moll and Edie.

COUNT III – CONSTRUCTIVE TRUST

45. CSI incorporates paragraph 1 through 44 above as if alleged fully herein.

46. The Patents In Suit were procured through actual or constructive fraud with intent to deceive and defraud at least the public, Nestle, CSI and/or the U.S. Patent and Trademark Office.

47. The Patents In Suit acquired by Novembal are rightly the property of CSI.

48. A constructive trust for the benefit of CSI should be imposed on Novembal's interests and benefits in the Patents In Suit.

PRAYER FOR RELIEF

WHEREFORE, CSI prays for the following judgment and relief:

- a. a declaration that the inventors on the '442 patent were named in error;
- b. a declaration that the inventors on the '171 patent were named in error;
- c. an order to the Director of the U.S. Patent and Trademark Office to correct inventorship on the '442 patent to remove the current inventors and add the correct CSI inventors;
- d. an order to the Director of the U.S. Patent and Trademark Office to correct inventorship on the '171 patent to remove the current inventors and add the correct CSI inventors;
- e. a declaration that the case is exceptional under 35 U.S.C. § 285;
- f. a preliminary and/or permanent injunction barring Novembal from enforcing the Patents In Suit against CSI;
- g. a preliminary and/or permanent injunction barring Novembal from assigning, licensing or otherwise disposing of the Patents In Suit;
- h. imposition of a constructive trust on the Patents In Suit for the benefit of CSI;
- i. an award of attorneys' fees, costs and related expenses to CSI pursuant to 35 U.S.C. § 285 and other equitable powers of the Court;
- j. such other relief, in law or equity, as this Court deems just and proper.

Date: September 17, 2019

Respectfully submitted,

BARNES & THORNBURG LLP

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