

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

FRITO-LAY NORTH AMERICA, INC.,)	
)	
Plaintiff,)	CASE NO. _____
)	
v.)	
)	DECLARATORY RELIEF
INNOVIA FILMS LIMITED, and)	SOUGHT
INNOVIA FILMS, INC.,)	
)	JURY DEMANDED
Defendants.)	
_____)	

COMPLAINT

Plaintiff Frito-Lay North America, Inc. (“Frito-Lay”) files this Complaint for declaratory relief, and hereby alleges as follows:

PARTIES

1. Plaintiff Frito-Lay North America (“Frito-Lay”) is a Delaware corporation with its principal place of business located at 7701 Legacy Drive, Plano, Texas 75024.
2. Defendant Innovia Films Limited (“IFL”) is a British corporation with its principal place of business at The Coach House, West Street, Wigton, Cumbria, United Kingdom CA7 9PD.
3. Defendant Innovia Films, Inc. (“IFI”) is a Delaware corporation with its principal place of business located at 1950 Lake Park Drive, Smyrna, GA 30080. IFI is wholly owned and controlled by IFL and acts as an “alter ego” of IFL.

JURISDICTION AND VENUE

4. Pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Frito-Lay seeks, among other things, a declaration of patent rights arising under Title 35 of the United

States Code. This Court has jurisdiction over the subject matter of this suit pursuant to 28 U.S.C. § 1331 as well as 28 U.S.C. § 1338. This Court also has supplemental jurisdiction to issue a declaration of rights as to ancillary state law claims pursuant to 28 U.S.C. § 1367.

5. This Court has personal jurisdiction, both generally and specifically, over IFL and IFI (collectively, “Innovia”). Generally, personal jurisdiction exists over Innovia because Innovia have established and maintained contacts with the State of Texas due, at least in part, to IFI’s registration to do business in Texas and the fact that IFI is IFL’s alter ego. Specifically, personal jurisdiction exists over Innovia as a result of repeated meetings and interactions Innovia had with Frito-Lay in Plano, Texas, which meetings and interactions give rise to this dispute.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(2) and 1391(c).

FACTS

Background

7. Frito-Lay is one of the world’s largest manufacturers of snack foods, and it is a leading innovator in the snack food and related products market.

8. In line with its long history of innovation, starting in at least 2004, Frito-Lay began developing biodegradable films that could be used to package its chips and other assorted snack foods.

9. As a result of this development effort, beginning in August 2006, Frito-Lay filed several patent applications in the United States, and later throughout the world. Some of those applications have issued as patents.

10. In multiple actions filed in the United Kingdom, one in the U.K. Intellectual Property Office (Exh. A), and the other in the Patents Court of the High Court of Justice of England & Wales (Chancery Division) (Exh. A at 5-6), IFL asserts that IFL employees actually invented, or at least partially invented, the inventions described and claimed in the issued patents

and pending applications and further asserts that IFL is therefore the proper owner, or at least co-owners, of the issued patents and pending patent applications. IFL further alleges that Frito-Lay breached its obligations of confidentiality to IFL as required by a “Confidentiality and Non-Use Agreement for the Mutual Disclosure of Information” (“Confidentiality Agreement”), which Confidentiality Agreement was executed between IFI and Frito-Lay on or about March 7, 2005 (Exh. A at 27-29). Apparently based on the contentions filed in the U.K. proceedings, IFL also filed a request with the European Patent Office to suspend the examination of Frito-Lay’s pending EPO patent applications.

11. Frito-Lay disputes each of the claims and allegations made by IFL in the U.K. and the EPO, which dispute gives rise to a real, cognizable, and justiciable controversy between the parties.

Relationship between Frito-Lay, IFL, and IFI

12. In late 2004, during the time Frito-Lay was developing its biodegradable films, representatives of Frito-Lay attended a Chicago packaging trade exhibition. While at that exhibition, the Frito-Lay representatives met representatives of IFI.

13. According to a “Statement of Grounds” IFL filed with the U.K. Intellectual Property Office (“Statement of Grounds”), IFL contends that IFI is the United States subsidiary of IFL. Exh. A at 88 ¶ 2.

14. In its Statement of Grounds, IFL alleges that at the Chicago trade exhibition, IFI’s representative told Frito-Lay that IFI’s parent company, IFL, was in the business of designing and developing configurations of film packaging. Exh. A at 89 ¶ 4.

15. Additionally, in its Statement of Grounds, IFL alleges that as a result of the meeting and discussions in Chicago, representatives of Frito-Lay and Innovia arranged a series of meetings “for the purposes of Frito-Lay evaluating whether IFL’s proposals for films suitable for

snack food packaging might satisfy Frito-Lay's requirements." Exh. A at 89 ¶ 5. As IFL concedes in its Statement of Grounds, several meetings took place between the parties in person at Frito-Lay's headquarters in Plano, Texas. These Plano meetings included meetings on or about February 2, 2005, March 23, 2005, August 22, 2005, and October 13, 2005. *See* Exh. A at 89 ¶ 5, 90 ¶ 8.

16. As IFL also alleges in its Statement of Grounds, during these meetings "IFL Proposals were disclosed to Frito-Lay." Exh. A at 90 ¶ 8. According to IFL, such proposals were disclosed to Frito-Lay by IFL. Exh. A at 91 ¶¶ 10-13. IFL attaches copies of information it alleges were provided to Frito-Lay in connection with the purported proposals. Exh. A at 44-82, 107-116, 187-203.

17. As noted, in connection with the discussions, Frito-Lay and IFI executed a Confidentiality Agreement. In its Statement of Grounds, IFL asserts that IFI executed the Confidentiality Agreement "on behalf of IFL." Exh. A at 93 ¶ 25(a).

18. The Confidentiality Agreement defines "Confidential Information" as:

information disclosed to one party by the other or if intangible or orally disclosed and is described in a writing designating the information as 'Confidential' delivered to the receiving party within a reasonable period of time following the initial disclosure . . . [and] shall include information and data relative to the research, development, production, packaging control, sale and marketing of foods including, but not limited to economic information, business and technical development plans, marketing strategy, data, technical information, know-how, process and product information, methods of manufacture, intangible assets . . .

Exh. A at 27.

19. The Confidentiality Agreement also states:

Each party acknowledges that the other may currently or in the future be developing information internally, or receiving information from other parties that is similar to that party's Confidential Information. Accordingly, nothing in this Agreement will be construed as a representation or agreement that either party will refrain from developing or authorizing another to develop any product, concepts, systems, or techniques that are similar to those contemplated in any

discussions between the parties or disclosed or embodied in one party's Confidential Information provided that the receiving party does not violate any of its obligations under this Agreement.

Exh. A at 28.

20. As also noted above, IFL attaches copies of information it alleges was provided to Frito-Lay in connection with the purported proposals. Exh. A at 44-82, 107-116, 187-203. None of the documents alleged to have been provided to Frito-Lay are marked "Confidential" as required by the Confidentiality Agreement.

21. The discussions between Frito-Lay and Innovia did not result in any formal or informal business arrangement between the parties.

Frito-Lay's Development of Patented Technologies

22. Even before meeting with Innovia, internal Frito-Lay scientists and engineers began researching the use of biodegradable films for Frito-Lay packages. That research continued both during and after the time Frito-Lay met with Innovia. As a result of their independent research efforts, Frito-Lay scientists and engineers discovered and invented novel flexible film packaging that maintains certain barrier properties and that is made up of several layers of films, including a biodegradable "bio-based" layer.

23. As noted above, the Confidentiality Agreement acknowledges that Frito-Lay may currently, or in the future, develop information internally that is similar to information received from Innovia and that nothing in the Confidentiality Agreement precludes such development. Exh. A at 28. In fact, in the course of its meetings with Innovia, Frito Lay told Innovia that it had begun and was continuing its independent development of biodegradable films.

24. As a result of its independent development efforts, Frito-Lay applied for several U.S. and non-U.S. patents. Those patent applications include US 11/464,331 ("the '331 family"), U.S. 11/848,775 ("the '775 application"), U.S. 12/031,500 ("the '500 family"), and U.S.

12/716,033 (“the ’033 family”). In IFL’s submission to the U.K. Intellectual Property Office, IFL listed “Fritolay [sic] applications identified so far.” Exh. A at 25. IFL’s list is incomplete, and attached as Exhibit B is a document that identifies all Frito-Lay patents that issued from these applications, the currently pending applications associated with each patent application family and patent application, as well as the relationship between each such patent, patent application family and patent application. These are collectively referred to as “Frito-Lay’s Intellectual Property Rights.”

25. On May 31, 2011, U.S. Patent No. 7,951,436 duly and legally issued from the original ’331 patent application and properly names Anthony Robert Knoerzer of Parker, Texas and Brad Dewayne Rodgers of Frisco, Texas as inventors. Frito-Lay is the sole and legal owner of the ’436 patent and all related patents and patent applications in the ’436 family.

26. On May 17, 2011, U.S. Patent No. 7,943,218 duly and legally issued from the ’500 application and properly names Anthony Robert Knoerzer of Parker, Texas, Kenneth Scott Laverdure of Plano, Texas, and Brad Dewayne Rodgers of Frisco, Texas as inventors. Frito-Lay is the sole and legal owner of the ’218 patent and all related patents and patent applications in the ’218 family.

27. The ’775 application was filed on August 31, 2007 date and properly names Anthony Robert Knoerzer of Parker, Texas, and Brad Dewayne Rodgers of Frisco, Texas as inventors. Frito-Lay is the sole and legal owner of the ’775 application.

28. The original application forming the basis of the ’033 family was filed on March 2, 2010 and properly names Anthony Robert Knoerzer of Parker, Texas, Kenneth Scott Laverdure of Plano, Texas, Eldridge M. Mount III of Canandaigua, New York, and Brad Dewayne Rodgers of Frisco, Texas as inventors. Frito-Lay is the sole and legal owner of the ’033 family.

The Dispute Between Frito-Lay and Innovia

29. On May 22, 2009, after Frito-Lay had successfully developed its new inventions and applied for several U.S. patents, counsel for Innovia sent correspondence to Frito-Lay's headquarters in Plano, Texas, demanding a free license for Innovia and its subsidiaries that would cover Frito-Lay's Intellectual Property Rights. Exh. C at 2-3. Frito-Lay refused, and IFL has taken the following steps in Europe, claiming ownership and inventorship of Frito-Lay's Intellectual Property Rights:

- (1) An application to the United Kingdom Intellectual Property Office under Section 12 of the UK Patents Act 1977, filed October 21, 2011. Exh. A. IFL also claims Frito-Lay breached its obligations under the Confidentiality Agreement by allegedly disclosing IFL's confidential information through Frito-Lay's various patent applications. Exh. A at 102 ¶¶ 69-70, which refers to the "proposed High Court proceedings" (These are the proceedings referred to at (2) below.)
- (2) An action before the Patents Court of the High Court of Justice of England & Wales (Chancery Division) filed November 4, 2011 (but not yet served on Frito-Lay) (Exh. A at 5-6), which requests various declarations, injunctions, damages, orders for assignment, and entitlement claims as specified in the "Brief Details of Claim" (Exh. A at 5); and
- (3) A request to suspend patent examinations filed with the European Patent Office on November 10, 2011 by letter dated November 9, 2011 (Ref. No. JMP/TSB/nic/M514226GB). Exh. D. This request was granted by the European Patent Office on November 18, 2011.

30. Frito-Lay, not IFL, developed the technology to produce this certain biodegradable packaging and therefore is the rightful owner of the '436 patent, the '218 patent and all other Frito-Lay Intellectual Property Rights. Accordingly, Frito-Lay seeks a definitive resolution of its ownership and inventorship rights. In addition, Frito-Lay seeks a declaration that it did not violate the Confidentiality Agreement signed with IFI, or otherwise breach any obligation of confidence, express or implied, owed to IFI and/or IFL.

COUNT 1: DECLARATORY JUDGMENT
OF FRITO-LAY'S OWNERSHIP OF THE '436 AND '218 PATENTS

31. Plaintiff Frito-Lay repeats and realleges each and every allegation contained in the above paragraphs as if fully set forth herein.

32. Frito-Lay is entitled to a declaratory judgment that Frito-Lay is the rightful owner of the '436 and '218 patents pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and provisions of United States patent law, including at least 35 U.S.C. § 261.

33. By reason of at least the actions taken before the European Patent Office, the United Kingdom Intellectual Property Office and the Patents Court of the High Court of Justice of England & Wales (Chancery Division) described above, a real, cognizable, and justiciable controversy has arisen and now exists between Frito-Lay and Innovia. Innovia's actions before European courts and patent authorities have damaged and are threatening to continue to damage Frito-Lay. In particular, the European Patent Office has already suspended its examination of two Frito-Lay patent applications. Unless the controversy between the parties is resolved here, where the actions at the heart of the dispute occurred, Innovia will continue to harm Frito-Lay by seeking to claim ownership over Frito-Lay's rightful inventions.

34. Frito-Lay has no adequate remedy at law. A declaratory action is necessary and useful in resolving and disposing of the question of ownership of the '436 and '218 patents. This

action is the best and most effective remedy for finalizing the controversy between the parties and for relieving Frito-Lay of the expensive and damaging uncertainty surrounding these patents.

COUNT 2: DECLARATORY JUDGMENT
OF FRITO-LAY'S INVENTORSHIP OF THE '436 AND '218 PATENTS

35. Plaintiff Frito-Lay repeats and realleges each and every allegation contained in the above paragraphs as if fully set forth herein.

36. Frito-Lay is entitled to a declaratory judgment that the Frito-Lay employees listed on the '436 patent, namely Anthony Robert Knoerzer and Brad Dewayne Rodgers, and the '218 patent, namely Anthony Robert Knoerzer, Kenneth Scott Laverdure, and Brad Dewayne Rodgers, are the only rightful inventors of the '436 and '218 patents pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and provisions of United States patent law, including at least 35 U.S.C. §§ 115 and 116.

37. By reason of at least the actions taken before the European Patent Office, the United Kingdom Intellectual Property Office and the Patents Court of the High Court of Justice of England & Wales (Chancery Division) described above, a real, cognizable, and justiciable controversy has arisen and now exists between Frito-Lay and Innovia. Innovia's actions before European courts and patent authorities have damaged and are threatening to continue to damage Frito-Lay. In particular, the European Patent Office has already suspended its examination of two Frito-Lay patent applications. Unless the controversy between the parties is resolved here, where the actions at the heart of the dispute occurred, Innovia will continue to harm Frito-Lay by seeking to claim inventorship over the '436 and '218 patents.

38. Frito-Lay has no adequate remedy at law. A declaratory action is necessary and useful in resolving and disposing of the question of inventorship of the '436 and '218 patents. This action is the best and most effective remedy for finalizing the controversy between the

parties and for relieving Frito-Lay of the expensive and damaging uncertainty surrounding these patents.

COUNT 3: DECLARATORY JUDGMENT
OF FRITO-LAY'S OWNERSHIP OF INTELLECTUAL PROPERTY IN SUIT

39. Plaintiff Frito-Lay repeats and realleges each and every allegation contained in the above paragraphs as if fully set forth herein.

40. Frito-Lay is entitled to a declaratory judgment that Frito-Lay is the rightful owner of all of the Frito-Lay Intellectual Property Rights and has properly named all true inventors of the Frito-Lay Intellectual Property Rights pursuant to the Declaratory Judgment Act, 28 U.S.C. 28 U.S.C. §§ 2201-2202.

41. By reason of at least the actions taken before the European Patent Office, the United Kingdom Intellectual Property Office and the Patents Court of the High Court of Justice of England & Wales (Chancery Division) described above, a real, cognizable, and justiciable controversy has arisen and now exists between Frito-Lay and Innovia. Innovia has claimed ownership and the identity of the true inventors of Frito-Lay's Intellectual Property Rights, including Frito-Lay's patent applications filed in the United States and related international patent applications. A list of Frito-Lay's Intellectual Property Rights is attached as Exhibit B. Innovia's actions before European courts and patent authorities have damaged and are threatening to continue to damage Frito-Lay. In particular, the European Patent Office has already suspended its examination of two Frito-Lay patent applications. Unless the controversy between the parties is resolved here, where the actions at the heart of the dispute occurred, Innovia will continue to harm Frito-Lay by seeking to claim ownership and development of the intellectual property developed solely by Frito-Lay and rightfully belonging to Frito-Lay.

42. Frito-Lay has no adequate remedy at law. A declaratory action is necessary and useful in resolving and disposing of the question of ownership and development of the Frito-Lay Intellectual Property Rights. This action is the best and most effective remedy for resolving the controversy between the parties and for relieving Frito-Lay of the expensive and damaging uncertainty surrounding the use and ownership of this intellectual property.

COUNT 4: DECLARATORY JUDGMENT
THAT FRITO-LAY DID NOT BREACH THE CONFIDENTIALITY AGREEMENT

43. Plaintiff Frito-Lay repeats and realleges each and every allegation contained in the above paragraphs as if fully set forth herein.

44. Frito-Lay is entitled to a declaratory judgment that Frito-Lay has not violated the Confidentiality Agreement between Frito-Lay and Innovia or in any other way breached an obligation of confidence, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and the laws of Delaware, under which the contract was executed.

45. By reason of at least the actions taken before the U.K. Intellectual Property Office and the Patents Court of the High Court of Justice of England & Wales (Chancery Division) described above, a real, cognizable, and justiciable controversy has arisen and now exists between Frito-Lay and Innovia. IFL has alleged that Frito-Lay has breached the Confidentiality Agreement with IFI and thereby injured IFL. Unless the controversy between the parties is resolved here, where the contract was negotiated and where the actions at the heart of the dispute occurred, Innovia will continue to harm Frito-Lay through their claim that Frito-Lay breached the Confidentiality Agreement.

46. Frito-Lay has no adequate remedy at law. A declaratory action is necessary and useful in resolving and disposing of the question of whether Frito-Lay breached the Confidentiality Agreement or breached any duty of confidence. This action is the best and most

effective remedy for finalizing the controversy between the parties and for relieving Frito-Lay of the expensive and damaging uncertainty surrounding this contract.

PRAYER FOR RELIEF

WHEREFORE, Frito-Lay respectfully requests that this Court:

- A. Enter Judgment in Frito-Lay's favor;
- B. Declare that Frito-Lay is the true and rightful owner of the '436 and '218 patents;
- C. Declare that Frito-Lay employees Anthony Robert Knoerzer and Brad Dewayne Rodgers are the only true and rightful inventors of the '436 patent;
- D. Declare that Frito-Lay employees Anthony Robert Knoerzer, Kenneth Scott Laverdure, and Brad Dewayne Rodgers are the only true and rightful inventors of the '218 patent;
- E. Declare that Frito-Lay is the rightful owner of the Frito-Lay Intellectual Property Rights and has properly identified the true inventors of the Frito-Lay Intellectual Property Rights;
- F. Declare that Frito-Lay has not violated the Confidentiality Agreement signed between Frito-Lay, IFL, and/or IFI, or otherwise breached any obligation of confidence, express or implied, owed to IFL and/or IFI;
- G. And grant such other legal and equitable relief as the Court may deem Frito-Lay is entitled to receive.

DATED: November 23, 2011

GIBSON, DUNN & CRUTCHER LLP

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JURY DEMAND

Frito-Lay North America, Inc. hereby demands a trial by jury on all issues set forth in its
Complaint.

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