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Attorneys for Plaintiff and Counterdefendant
APIO, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

APIO, INC., a Delaware corporation,

Plaintiff,

vs.

MANN PACKING COMPANY, INC., a California corporation; and DOES 1 – 10, inclusive,

Defendants.

MANN PACKING COMPANY, INC., a California corporation,

Counterclaimant,

vs.

APIO, INC., a Delaware corporation,

Counterdefendant.

Case No. CV 07-5628 PVT

**DECLARATION OF WESLEY PAUL PRATTE IN SUPPORT OF PLAINTIFF'S OPENING CLAIM CONSTRUCTION BRIEF**

I, Wesley Paul Pratte, declare:

1. I have personal knowledge of the following facts and if called as a witness I could competently testify thereto.

2. I am the inventor of the patent-in-suit in this case, U.S. Patent No. 7,083,818 ("the '818 Patent").

3. I am currently employed by the plaintiff in this lawsuit, Apio, Inc.

Products Utilizing My Invention

4. Apio, Inc. has produced multiple different commercial products utilizing my invention. One of the products, a photograph of which is shown in Exhibit E, is in accordance with the preferred embodiment taught in the '818 Patent. Namely, the atmosphere control member is a selectively permeable membrane placed over a window in the sealing sheet. This product has been marked with the '818 Patent.

5. Another product produced by Apio, Inc. utilizing my invention is shown in the photograph attached hereto as Exhibit F. In the product shown in Exhibit F, the sealing sheet has multiple perforations which are atmosphere control members which modify the rates at which oxygen and carbon dioxide pass into and out of the sealed package. This product was first introduced in May 2003. This product has been marked with the '818 Patent.

6. Thus, Apio, Inc.'s products made pursuant to the '818 Patent have different types of atmosphere control members included in the sealing sheet.

7. Attached as Exhibit G is a true and correct copy of the U.S. Patent No. 7,083,818.

8. Attached as Exhibit H is a true and correct copy of the prosecution file history of U.S. Patent No. 7,083,818.

9. Currently there are three applications pending related to U.S. Patent No. 7,083,818. Those applications are U.S. Patent Application Nos. 11/408,442, 11/408,443 and 11/409,354. All three applications have the same specification and

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drawings as the '818 patent. U.S. Patent Application No. 11/408,443 is a continuation of U.S. Patent No. 7,083,818, also having claims directed to methods of making a vegetable tray, but of different scope than the claims of the '818 patent.

10. Attached as Exhibit I are copies of an Office action dated March 22, 2007 in U.S. Patent Application No. 11/408,442, an Office action dated March 22, 2007 in U.S. Patent Application No. 11/408,443; and an Office action dated March 21, 2007 in U.S. Patent Application No. 11/409,354.

11. Attached as Exhibit J is a declaration that was filed in an Amendment and Response to Office action filed on July 25, 2008 in U.S. Patent Application No. 11/408,443.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed this 8th day of August, 2008 at San Marcos, California.

Wesley Paul Pratte

Wesley Paul Pratte



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