UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

PREMIER TECH TECHNOLOGIES LIMITED, Plaintiff, v. NOVA PACKAGING, LLC, Defendant.	Case No. _____ **Jury Trial Demanded**

COMPLAINT

Plaintiff Premier Tech Technologies Limited, by and through its undersigned counsel, brings this action for patent infringement against Nova Packaging, LLC, and alleges as follows:

PARTIES

1. Premier Tech Technologies Limited ("Premier Tech") is a corporation organized and existing under the laws of Canada having its principal place of business at 1, Avenue Premier, Rivière-du-Loup (Québec), G5R 6C1, Canada.

2. Defendant Nova Packaging, LLC ("Nova" or "Defendant") is a limited liability company organized under the laws of the State of Colorado, with its principal place of business at 2525 West Evans Avenue, Denver, CO 80219.

FACTUAL ALLEGATIONS

Background of Premier Tech

3. Premier Tech designs and manufactures industrial equipment. For more than ninety years Premier Tech has served customers around the world in three core industries:

Horticulture and Agriculture – greenhouse production, agriculture, and lawn and garden; Industrial Equipment – rigid and flexible packaging, material handling, and palletizing; and Environmental Technologies – wastewater treatment and rainwater harvesting.

4. Premier Tech's Industrial Equipment Group is an industry-leading manufacturer of industrial rigid and flexible packaging and material handling equipment and provides completely integrated packaging lines that it designs, manufactures, and integrates to meet its customer demands.

5. Premier Tech has a long history of technical innovation and its specific contributions to the state of the art of rigid and flexible packaging and material handling equipment have substantially changed how companies fill, package, seal, and transport products in a wide variety of industries.

6. In connection with its research and development efforts to improve packaging and material handling equipment, Premier Tech has developed multiple innovative technologies including the technology protected by the valid and subsisting United States patent referenced below.

Jurisdiction and Venue

7. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, including 35 U.S.C. § 271. This Court has original and exclusive subject matter jurisdiction over the patent infringement claims for relief under 28 U.S.C. §§ 1331, 1338(a).

8. Personal jurisdiction exists generally over Nova Packaging because Nova is a limited liability company organized under the laws of the State of Colorado, with its principal place of business in this district.

9. Venue is proper in this Court under 28 U.S.C. § 1391 as well as 28 U.S.C. § 1400(b) because Nova resides within this District in the State of Colorado, that is, Nova is a limited liability company organized under the laws of the State of Colorado with its principal place of business in the District of Colorado. Nova committed at least one act of infringement in this District, and has a physical location in the District from which it conducts business. Furthermore, a substantial part of the events or omissions giving rise to the claims pleaded herein occurred within this judicial district, or a substantial part of property that is the subject of this action is situated within this judicial district.

The Patents-in-Suit

10. Premier Tech is the owner of the entire right, title, and interest in and to U.S. Patent No. 9,452,851 (the "'851 Patent"), entitled "*Robotized Transport and Transfer System,*" which was duly issued by the United States Patent and Trademark Office on September 27, 2016. A copy of the '851 Patent is attached as Exhibit A.

11. On April 16, 2013, Premier Tech sent Nova Packaging actual notice of the published pending patent application WO 2011/075816 that would ultimately issue as the '851 Patent, and a copy of the published application.

12. At all times following the application for the '851 Patent, Premier Tech has marked its patented equipment in compliance with the Patent Act's requirements, providing constructive notice to Nova of Premier Tech's patent rights.

Defendant's Wrongful Conduct

13. Nova designs, manufactures, uses, imports, offers for sale, and/or sells equipment under the Nova Packaging trade name throughout the United States that directly competes with offerings from Premier Tech.

14. Defendant, under the Nova trade name, has been and is currently making, using, offering for sale, importing, selling, distributing, and/or servicing products that infringe at least one claim of '851 Patent.

15. Defendant offers for sale certain automatic open mouth bagging systems that infringe Premier Tech's rights including by way of example, but not limited to, at least the RBH 2200 (the "Robotic Bagging Equipment" or "RBE").

16. Defendant lists the Robotic Bagging Equipment on its website as "Automatic Bagging System[s]," including the "Series 2200P and Series 220S Robotic Open Mouth Bag Placer & Handling Systems." (*See*, Exhibit B - http://www.novap.us/Products/Automatic-Bagging-System/RBH-2200.php) (hereinafter "Product Webpage").

17. On information and belief, Defendant offers at least two variants of Robotic Bagging Equipment, a "regular speed" version, shown in the product videos posted by Nova on Vimeo.com titled "Open Mouth Robotic Bag Handling System" and dated 2 May 2013 (*See*, Exhibit C - https://vimeo.com/65319028) (last accessed 27 Mar. 2018) (hereinafter "Regular Speed Product Video") and a "high speed" version (collectively, the "Accused Equipment"). The high speed version is shown in a product video obtained by Premier Tech titled "Hi-Speed_ Open_Mouth_Robotic_Bag_Hanger_published 21 nov 2013" dated 21 Nov. 2013. (herein after "High Speed Product Video").

18. The operation of the "regular speed" equipment is described in Nova's RBH-2200 product literature available on the Nova website which discusses the Series 2200P (placer) and Series 220S (sealer/handler). (*See*, Exhibit D - http://www.novap.us/UserFiles/File/NOVA%20Automatic%20Open%20Mouth%20Robotic%20Bagging%20Systems%20Series%202200P%20&%202200S.pdf) (hereinafter "Product Documentation").

19. Defendant has directly infringed, contributed to the infringement of, and/or continues to induce users of the Accused Equipment to infringe, one or more claims of the '851 Patent, by intentionally developing, making, using, marketing, advertising, providing, sending, importing, distributing and/or selling the Accused Equipment and accompanying documentation, materials, components, training, or support and aiding, abetting, encouraging, promoting or inviting use thereof.

20. The Regular Speed and High Speed versions of the Robotic Bagging Equipment include all elements of, for example, claim 1 of the '851 Patent.

A. Regular Speed Robotic Bagging Equipment

21. By way of example, claim 1 of the '851 Patent recites "[a] system for transporting and transferring a filled flexible package, having a top with an open mouth and a bottom, towards a flexible package closing system."

22. The Regular Speed RBE is a system for transporting and transferring a filled flexible package, having a top with an open mouth and a bottom, towards a flexible packaging closing system for use with paper and poly-woven laminated bags. (*See*, Figure 1 and Exhibit B, Product Webpage).

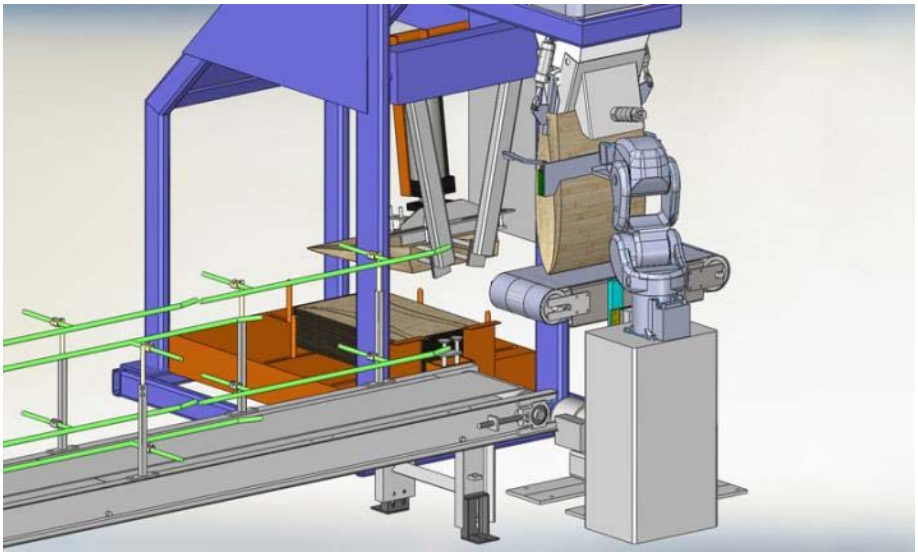


Figure 1

(*See* Exhibit B).

23. As shown in the Regular Speed Product Video, and in the labeled still images from the same in Figure 2 below, the tops of open mouth flexible packages are placed over a fill spout, the packages are filled, and then the filled flexible bags transferred to the adjacent flexible packaging closing system. As explained in the product literature "[b]ags are totally controlled and held from the time they are picked out of the bag magazine, until the time they are firmly in the bag closer transfer system." (*See*, Product Documentation).



Figure 2
(Screenshot from Regular Speed Product Video).

24. Claim 1 of the '851 Patent further recites "a lift-assist platform receiving the bottom of the flexible package in a filled state at a first position."

25. The Regular Speed RBE includes a lift-assist platform (arrow A, Figure 3 below) receiving the bottom of the flexible package (arrow B, Figure 3 below) in a filled state at a first position, as shown below:

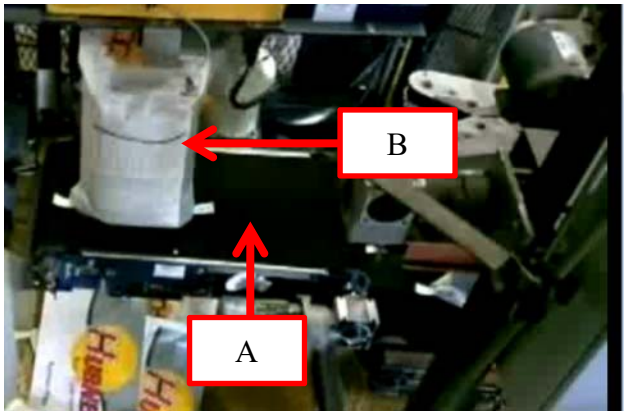


Figure 3
(Screenshot from Regular Speed Product Video) (showing the left conveyor assembly A receiving the bottom of the flexible package).

26. Claim 1 of the '851 Patent further recites "and supporting a substantial portion of a weight of the filled flexible package from the first position to a second position, vertically spaced-apart from the first position."

27. The Regular Speed RBE lift-assist platform is supporting a substantial portion of a weight of the filled flexible package from a first position (Figure 4), as the platform lowers (Figure 5), and then as the bag moves to a second position (Figure 6) vertically spaced-apart from the first position:



Figure 4



Figure 5



Figure 6

(Screenshots from Regular Speed Product Video).

28. As shown in the Regular Speed Product Video and in the screenshots in Figure 4 through Figure 6 above, the lift-assist platform rises to support the package during and after filling, then the platform lowers, along with the bag, guided by the robot, before the bag is displaced in the direction of the closing station and the next bag is loaded.

29. Claim 1 of the '851 Patent further recites "the lift-assist platform comprising a displacing system to displace and support the filled flexible package in an upright configuration from the first position to the second position."

30. The Regular Speed RBE includes a lift-assist platform comprising a displacing system (black conveyor belt capable of vertical displacement shown in Figure 4 through Figure 6, above) to displace and support the filled flexible package in an upright configuration from the

first position to the second position. As explained in the Product Documentation,"[b]ags are totally controlled and held from the time they are picked out of the bag magazine, until the time they are firmly in the bag closer transfer system." (*See*, Product Documentation).

31. Claim 1 of the '851 Patent further recites "a multi-axis robot."

32. The Regular Speed RBE includes a multi-axis robot as shown in Figure 7 below:

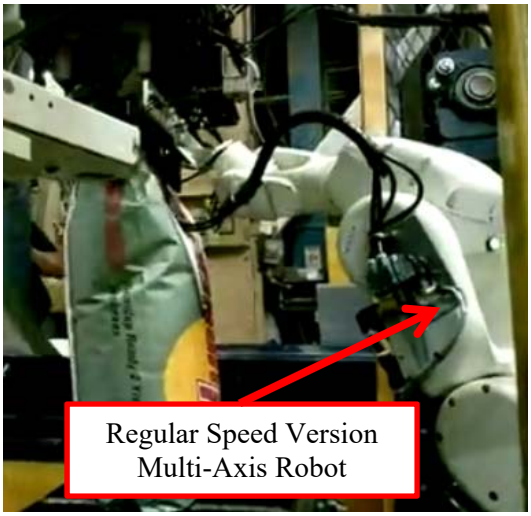


Figure 7
(Screenshot from Regular Speed Product Video).

33. Claim 1 of the '851 Patent further recites the multi-axis robot "having a gripper configured to grasp the top of the filled flexible package in the first position."

34. In the Regular Speed RBE, the multi-axis robot has a gripper configured to grasp the top of the filled flexible package in the first position. The gripper is mounted to the distal end of the multi-axis robot arm and has opposing clamps, one for each side of the flexible package. When activated, the grippers close and apply pressure to the open end of the flexible package, as shown in Figure 8 below:

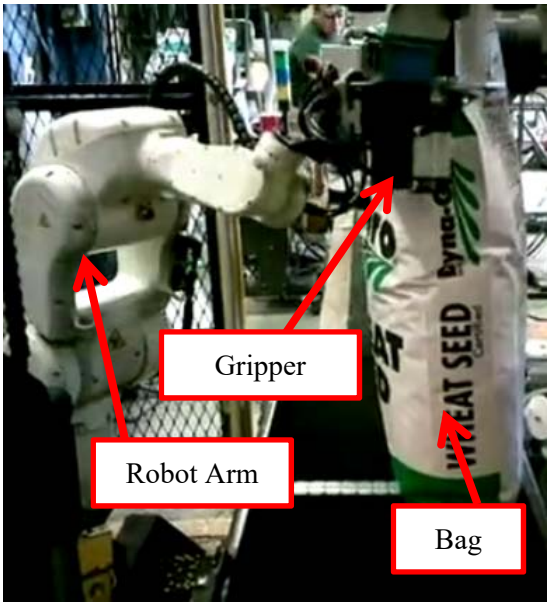


Figure 8

(Screenshots from Regular Speed Product Video).

35. Claim 1 of the '851 Patent further recites "maintain the top of the filled flexible package during displacement and transfer to the second position."

36. The Regular Speed RBE multi-axis robot gripper will maintain the top of the filled flexible packaging during displacement and transfer to the second position. The clamps close on the top of the filled flexible package after filling, just prior to release from the fill spout, and the multi-axis robot moves the gripper vertically and horizontally to maintain the filled package in an upright position and keep the gussets formed in the side of the bag, as shown in Figure 9 below:



Figure 9
(Screenshot from Regular Speed Product Video).

37. The product video clearly shows the Regular Speed RBE's grippers closing on the top of the filled flexible package after filling, just prior to release from the fill spout. As the cycle continues, the multi-axis robot moves the gripper vertically and horizontally to maintain the filled package in an upright position, and keep the gussets formed in the sides of the bag.

38. As explained in the Product Documentation,"[b]ags are totally controlled and held from the time they are picked out of the bag magazine, until the time they are firmly in the bag closer transfer system." (*See*, Product Documentation).

39. Claim 1 of the '851 Patent further recites "a controller operatively connected to the lift-assist platform and the multi-axis robot and synchronizing motion of the lift-assist platform and the multi-axis robot."

40. The Regular Speed RBE includes a controller operatively connected to the lift-assist platform and the multi-axis robot and synchronizing the motion of the lift-assist platform and the multi-axis robot.

41. The Product Website indicates the RBH 2200 provides "[t]otal robotic flexibility and programmability. . . [allowing] for fully automatic, or semi-automatic configuration." (*See* Product Website). The controller is operatively connected to the lift-assist platform and the multi-axis robot and synchronizes the motion of the lift-assist platform and the multi-axis robot.

42. The RBH 2200 includes a "color touch screen HMI with integrated robot control." (*See* Product Website). The Regular Speed Product Video shows the synchronized motion of the lift assist platform and the multi-axis robot. (*See generally* Regular Speed Product Video).

B. <u>High Speed Robotic Bagging Equipment</u>

43. By way of further example, claim 1 of the '851 Patent recites "[a] system for transporting and transferring a filled flexible package, having a top with an open mouth and a bottom, towards a flexible package closing system."

44. The High Speed RBE is a system for transporting and transferring a filled flexible package, having a top with an open mouth and a bottom, towards a flexible packaging closing system for use with paper and poly-woven laminated bags. (*See*, *e.g.*, Product Webpage). As shown in the High Speed Product Video, and in the labeled still images from the same in Figure 10 below, the tops of open mouth flexible packages are placed over a fill spout, the packages are filled, and then the filled flexible bags transferred to the adjacent flexible packaging closing system.

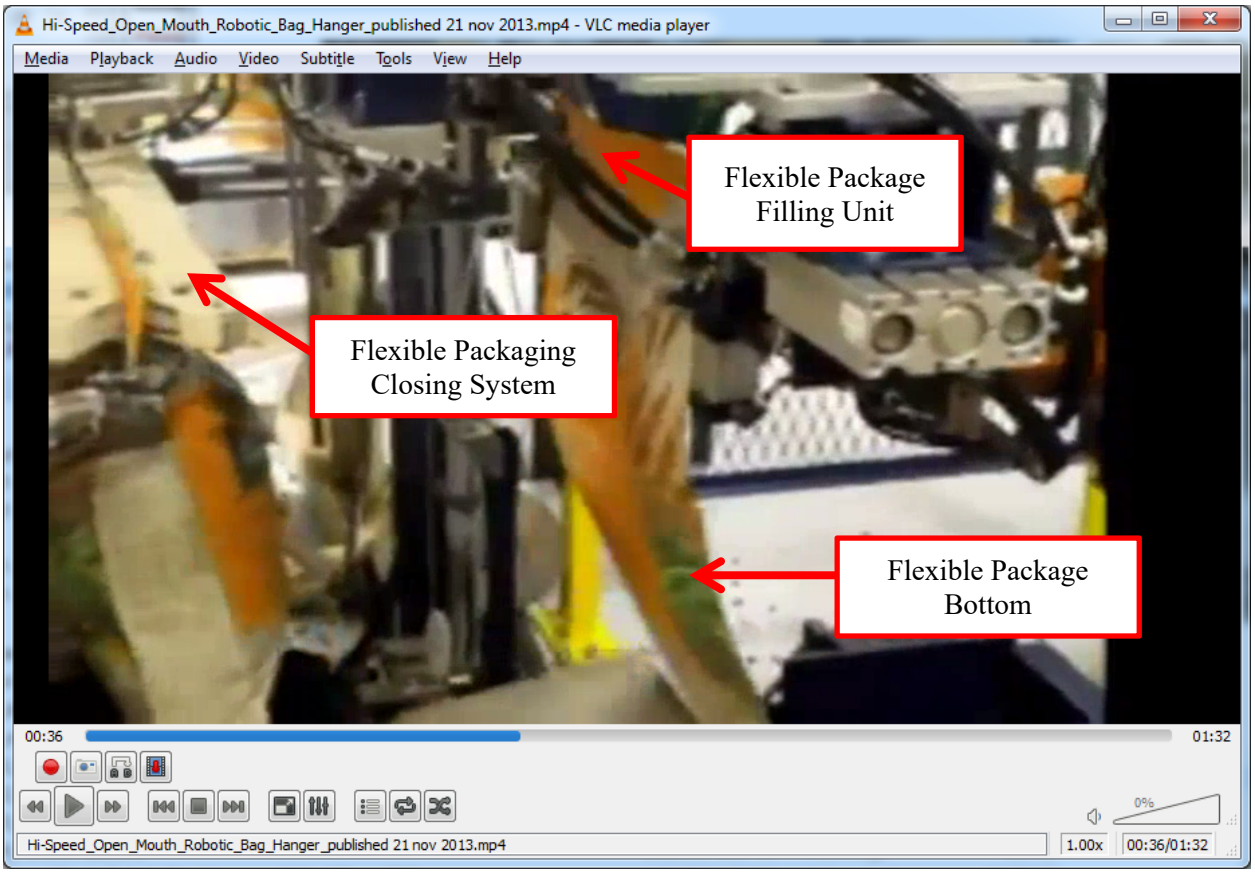


Figure 10
(Screenshot from High Speed Product Video).

45. Claim 1 of the '851 Patent further recites "a lift-assist platform receiving the bottom of the flexible package in a filled state at a first position."

46. The High Speed RBE includes a lift-assist platform (arrow A, Figure 3 below) receiving the bottom of the flexible package (arrow B, Figure 11 below) in a filled state at a first position, as shown in Figure 11 below:

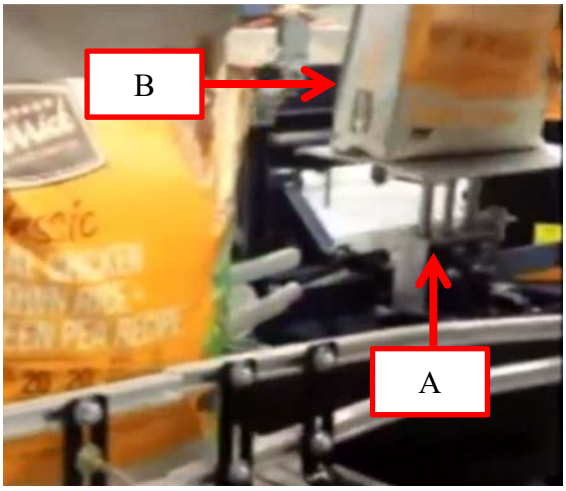


Figure 11
(Screenshot from High Speed Product Video) (showing silver lift-assist platform)

47. Claim 1 of the '851 Patent further recites "and supporting a substantial portion of a weight of the filled flexible package from the first position to a second position, vertically spaced-apart from the first position."

48. The Regular Speed RBE lift-assist platform is supporting a substantial portion of a weight of the filled flexible package from a first position (Figure 12), as the platform rotates (Figure 13), and then as the bag moves to a second position vertically spaced-apart from the first position:



Figure 12



Figure 13

(Screenshots from High Speed Product Video).

49. As shown in the High Speed Product Video and in the screenshots in Figure 12 and Figure 13 above, the silver platform rises and recieves the bottom of the filled flexible package, supporting its weight. The silver platform then pivots, continuing to support the weight of the filled flexible package, and allowing it to slide downward and laterally to the adjacent conveyor. The conveyor, then supporting a substantial portion of the weight of the filled flexible package, displaces the package towards the second (closing) position.

50. Claim 1 of the '851 Patent further recites "the lift-assist platform comprising a displacing system to displace and support the filled flexible package in an upright configuration from the first position to the second position."

51. The High Speed RBE includes a lift-assist platform comprising a displacing system to displace and support the filled flexible package in an upright configuration from the first position to the second position. The displacing system includes a silver support platform and a series of conveyor belts as shown in the High Speed Product Video and discussed above. The silver support platform is capable of both vertical displacement and angular displacement. Articulation of the silver platform results in both vertical and lateral displacement of the filled package supported thereon. The series of conveyor belts are capable of providing additional lateral displacement.

52. Claim 1 of the '851 Patent further recites "a multi-axis robot."

53. The High Speed RBE includes a multi-axis robot, as shown in Figure 14 below:

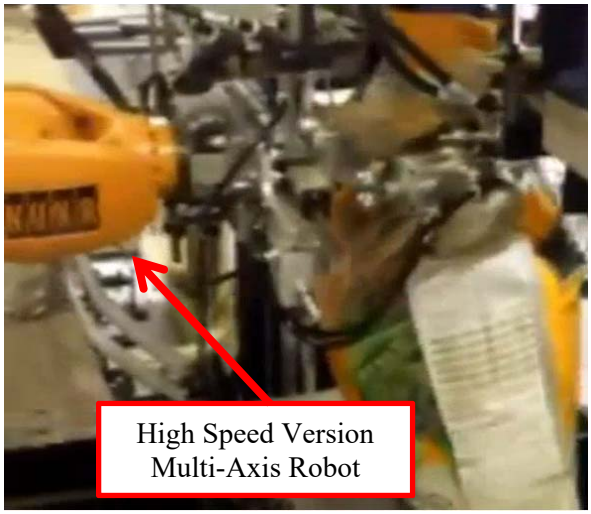


Figure 14
(Screenshot from Regular Speed Product Video).

54. Claim 1 of the '851 Patent further recites the multi-axis robot "having a gripper configured to grasp the top of the filled flexible package in the first position."

55. In the High Speed RBE, the multi-axis robot having a gripper configured to grasp the top of the filled flexible package in the first position. The gripper is mounted to the distal end of the multi-axis robot arm and has opposing clamps, one for each side of the flexible package. When activated, the grippers close, and apply pressure to the open end of the flexible package, as shown in Figure 15 below:

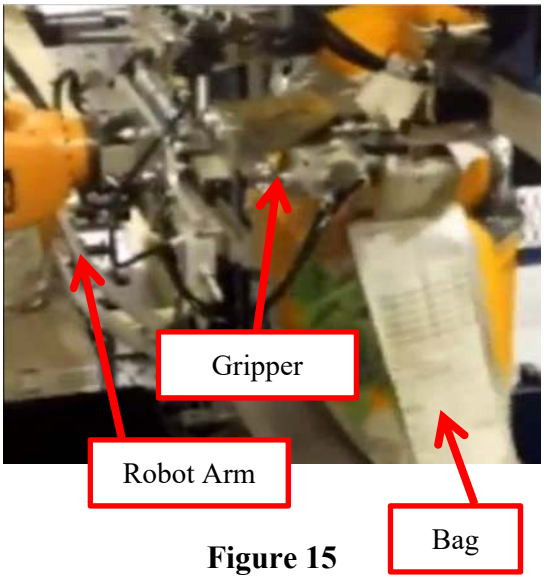


Figure 15

(Screenshot from High Speed Product Video).

56. Claim 1 of the '851 Patent further recites "maintain the top of the filled flexible package during displacement and transfer to the second position."

57. The High Speed RBE multi-axis robot gripper will maintain the top of the filled flexible packaging during displacement and transfer to the second position. The clamps close on the top of the filled flexible package after filling, just prior to release from the fill spout, and the multi-axis robot moves the gripper vertically and horizontally to maintain the filled package in an closed and approximately upright position, as shown in Figures 16, 17 and 18 below:



Figure 16

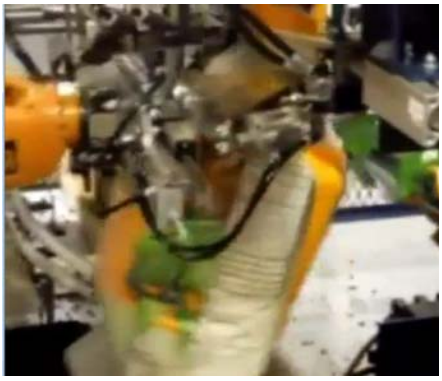


Figure 17



Figure 18

(Screenshots from High Speed Product Video).

58. The product videos clearly shows the High Speed RBE's grippers closing on the top of the filled flexible package after filling, just prior to release from the fill spout. As the cycle continues, the multi-axis robot moves the gripper vertically and horizontally to maintain the filled package in an upright position, and keep the gussets formed in the sides of the bag.

59. Claim 1 of the '851 Patent further recites "a controller operatively connected to the lift-assist platform and the multi-axis robot and synchronizing motion of the lift-assist platform and the multi-axis robot."

60. The High Speed RBE includes a controller operatively connected to the lift-assist platform and the multi-axis robot and synchronizing the motion of the lift-assist platform and the multi-axis robot.

61. The Product Website indicates the RBH 2200 provides "[t]otal robotic flexibility and programmability. . . [allowing] for fully automatic, or semi-automatic configuration." (*See* Product Website). The controller is operatively connected to the lift-assist platform and the multi-axis robot and synchronizes the motion of the lift-assist platform and the multi-axis robot.

62. The RBH 2200 includes a "color touch screen HMI with integrated robot control." (*See* Product Website). The High Speed Product Video shows the synchronized motion of the lift assist platform and the multi-axis robot. (*See generally* High Speed Product Video).

COUNT I
Infringement of U.S. Patent No. 9,452,851

63. Premier Tech incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

64. Defendant has infringed and is currently infringing, literally and/or under the doctrine of equivalents, the '851 Patent by, among other things, making, using, selling, offering for sale, and/or importing within this judicial district and elsewhere in the United States, without license or authority, products and/or processes that infringe one or more claims of the '851 Patent, including but not limited to the Accused Equipment.

65. Defendant also indirectly infringes the '851 Patent in violation of 35 U.S.C. § 271(b) and (c). Defendant induced and is inducing infringement of the '851 Patent by, among other things, actively and knowingly aiding and abetting others to directly make, use, offer for sale, sell, and/or import within this judicial district and elsewhere in the United States, without license or authority, for example, the Accused Equipment, which falls within the scope of at least claim 1 of the '851 Patent. On information and belief Defendant provides directions, instructions, and/or other materials that encourage and facilitate infringing use by others.

Defendant has sold and is selling at least the Accused Equipment with the knowledge and intent that customers who buy the product will commit infringement by using the product, and, therefore, those customers have been and are directly infringing the '851 Patent.

66. Defendant has contributorily and is currently contributorily infringing the '851 Patent, in violation of 35 U.S.C. § 271(c), by, among other things, selling, offering for sale, and/or importing into this judicial district and elsewhere in the United States, without license or authority, products, for example, the Accused Equipment, or components of that product which constitute a material part of the '851 Patent, knowing that such products and/or components are especially made or especially adapted for use in the infringement of the '851 Patent, including but not limited to claim 1, and are not staple articles of commerce suitable for substantial non-infringing use.

67. Upon information and belief, Defendant has been aware of the '851 Patent since at least the issuance of the '851 Patent due to the post-publication notice letter sent from Premier Tech to Defendant and/or Premier Tech's compliance with the Marking Statute, but in any event, no later than the date of this Complaint.

68. Having actual notice of Premier Tech's pending patent application, and constructive notice of Premier Tech's rights, the infringement by Defendant of the '851 Patent continues to be willful and deliberate, and, therefore, Premier Tech is entitled to damages, including enhanced damages, under 35 U.S.C. § 284.

69. As a direct and proximate result of the infringement of the '851 Patent by Defendant, Premier Tech has suffered and will continue to suffer irreparable injury for which

there is no adequate remedy at law. Premier Tech also has been damaged and, until an injunction issues, will continue to be damaged in an amount yet to be determined.

JURY DEMAND

Premier Tech requests a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Premier Tech requests that the Court enter the following in its favor and against Defendant as follows:

A. A judgment in favor of Premier Tech on all of its claims against Defendant;

B. A judgment that Defendant has violated 35 U.S.C. § 271 by infringing, directly or indirectly, and literally or under the doctrine of equivalents, one or more claims of the '851 Patent;

C. A judgment awarding Premier Tech damages adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty under 35 U.S.C. § 284, in an amount to be determined at trial;

D. A judgment that Defendant's patent infringement has been and continues to be willful, and a trebling of damages;

E. A judgment declaring that this is an exceptional case and awarding Premier Tech its actual costs, expenses, and reasonable attorneys' fees under 35 U.S.C. § 285;

F. A judgment that Defendant and its respective officers, agents, servants, employees, and attorneys, and all other persons who are in active concert or participation with them are enjoined, preliminarily and permanently, from further infringement of the '851 Patent;

G. A judgment awarding Premier Tech pre-judgment and post-judgment interest; and

H. A judgment awarding such further equitable or other relief as the Court deems just and proper.

Dated: April 10, 2018

Respectfully submitted,

By: */s/ Ann G. Fort*

Ann G. Fort (GA 269995)
(D. Colo. Bar Member)
Robert R.L. Kohse (GA 863748)
(D. Colo. Bar Member)
Walter S. Freitag (GA 510393)
(Seeking D. Colo Bar Membership)
EVERSHEDS SUTHERLAND (US) LLP
999 Peachtree St. NE, Suite 2300
Atlanta, GA 30309
Phone: 404-853-8000
Fax: 404-853-8806
Email: annfort@eversheds-sutherland.com
robkohse@ eversheds-sutherland.com
walterfreitag@ eversheds-sutherland.com

Attorneys for Premier Tech Technologies Ltd.