

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MPL BRANDS NV, INC.

Petitioner,

v.

BUZZBALLZ, LLC

Patent Owner.

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PTAB Case No. PGR2024-00035

U.S. Patent No. 11,932,441

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**DECLARATION OF JOSEPH T. NORRIS**

I, Joseph T. Norris, do declare as follows:

## **I. INTRODUCTION**

1. I am over the age of eighteen (18) and am otherwise competent to make this Declaration. This Declaration is based on my personal knowledge and recollection.

2. I have been engaged by MPL Brands NV, Inc. (“MPL”) as a consultant in connection with MPL’s Petition for Post-Grant Review of U.S. Patent No. 11,932,441 (the “’441 Patent”). I understand that my Declaration will accompany a petition for post grant review involving this U.S. Patent. I am being compensated for the time that I work on this Declaration at my standard hourly rate of \$125 per hour and am being reimbursed for reasonable expenses that I may incur while working on this matter. I have no financial interest in the outcome of this matter or any other matter that may exist between MPL and the Patent Owner. My compensation does not depend in any way on the content of this Declaration.

3. I have been asked to describe public availability of The Coca-Cola Company PET (polyethylene terephthalate) cans that were filled and distributed by Coca-Cola Bottling of Columbus, GA in 1985 and 1986. I have not been asked to opine on whether this product is prior art to the ’441 Patent, nor have I been asked to review the ’441 Patent or its claims.

## **II. BACKGROUND AND EXPERIENCE**

4. In 1976, I earned a Bachelor of Science in Mechanical Engineering and Materials Science from Union College in Schenectady, New York.

5. From October 1977 through August 1990, I was a packaging engineer for The Coca-Cola Company. During my initial time at The Coca-Cola Company, I was responsible for package engineering and commercialization of Coca-Cola's PET products, including bottles and cans, closures for those products and labeling or decoration systems for those products. I was responsible for products that were distributed for Coca-Cola USA, Coca-Cola International, and Coca-Cola Northern Europe while I was based in London. I led innovation projects that were commercialized at bottling locations globally. This included early consumer research, product compatibility and carbonation retention of the packages and establishing commercial standards for the purchasing of these packaging components. Licensed bottlers must procure their packaging materials from sources approved by The Coca-Cola Company and meet standards I and my colleagues published. Training our bottle partners was a key role in teaching them about new materials and bottling practices.

6. After my time at Coca-Cola, I was an Associate Director of Oral Care and Director of Package Innovation for Colgate Palmolive Co. from 1990 through

October 2005. During this time, I supported Colgate's U.S. brands and manufacturing of their packaging.

7. In October 2005, I returned to The Coca-Cola Company as a Principal Engineer for Global Packaging Research and Development. My work during this time focused on early concept ideation, design, and engineering of alpha-stage products. I was part of the team that commercialized the resealable shaped aluminum bottle, which had the iconic contour shape. I retired from Coca-Cola in June 2013. A copy of my LinkedIn profile, which shows my employment history, is included as an appendix to this Declaration.

8. After my retirement from Coca-Cola, I established Packaging Strategies and Solutions LLC, where I provide consulting services to companies in the packaging industry.

9. I am the named inventor on 19 U.S. patents.

### **III. DEVELOPMENT OF THE COCA-COLA COMPANY PET CAN**

10. I am familiar with a PET can that Coca-Cola developed and commercialized in the mid-1980s. The project to commercialize a plastic can for Coca-Cola's soft drink products (e.g., Coke (referred to a "Coke Classic" for a period of time), Diet Coke, Sprite) started in 1983 under the project name "PCAN."

11. I took over as project manager of PCAN in 1984. Our goal for the PCAN project was to mimic the design and shape of Coca-Cola's 12oz aluminum

cans that were on the market at the time using PET for the body of the can instead of aluminum, while maintaining an aluminum top. The differentiator was that these cans were clear and allowed the product to be seen through the container. The project also fit into a self-manufacturing strategy that Coca-Cola was undergoing at the time.

12. PET is a resin from the polyester family. Coca-Cola began looking for plastic alternatives to their aluminum cans, in part, because Coca-Cola was transitioning to a co-op model for its PET bottle manufacturing process (e.g., Coca-Cola two-liter bottles). Under this model, Coca-Cola would bring its manufacturing process in-house instead of relying on independent suppliers (of the aluminum cans, for example) to manufacture its products. A reliance on PET cans would decouple can costs from the aluminum commodity market and provide more control of costs and any associated increases. It would also fit Coca-Cola's existing bottle manufacturing strategy.

13. The PET can was developed by Coca-Cola in conjunction with Petainer S.A., based in Neuchatel, Switzerland, with R&D labs in Malmo, Sweden. Petainer manufactured the PET cans in PLM's<sup>1</sup> facility in Dongen, Netherlands, using Krupp Corpoplast special forming equipment. Petainer was responsible for the preform and manufacturing process of the PET body of the can. A "preform" is an intermediate shape of the PET plastic that is used in the manufacturing process. The PET is

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<sup>1</sup> PLM was Petainer's parent company.

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At the rounded end of the preform, there is a nub at the spot where the PET is injected into the mold called a gate.

14. An example of the PET container used for the Coca-Cola products following the molding process but before filling, adding the aluminum top, or adding the label is shown below. Petainer used an extrusion process to create is PET container products, such as described in the '024 patent.

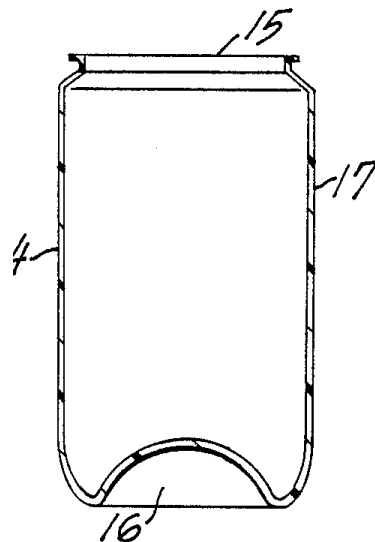


FIG. 7

15. Conversely, in the bottle making process, the preform is used in a blow-molding process, whereby the preform is reheated and then placed into a mold that is shaped like the final container. The PET in the shape of the preform is heated and then air is blown into the preform causing it to expand into the shape of the mold. In some blow-molding processes, a stretch rod is also inserted and used to press the

bottom-center portion of the preform down to the bottom of the mold. The excess portions of the PET are then trimmed. Subsequent cans manufactured by Continental PET and Nissei Technology Corporation used a blow-molding and trimming process, similar to this bottle making process.

16. I understand that Petainer patented the technology that it used to manufacture the PET body of these cans. The bottom of the Coke PET cans bear the marking “PETAINER ® PAT 4,405,546 AND OTHERS,” as show in the image below<sup>3</sup>:

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<sup>3</sup> This is a photo of the bottom of a Coke PET can that was sold by Coke in 1985. I have several such cans in my possession bearing labels for Coke (which was later renamed “New Coke,” as discussed below), Coke Classic, Diet Coke, and Sprite, and all bear this same marking on the bottom.



17. Petainer was also responsible for applying the PVC shrink sleeve that was put over the clear PET body to identify the type of Coca-Cola product that would be sold in these containers. The following is an image of the Coke (i.e., Coca-Cola Classic), New Coke, Diet Coke, and Sprite PET cans that Coke sold in 1985 with the shrink Sleeves covering the PET cans:



18. As part of my role as Project Manager for PCAN, I visited and worked with Petainer's manufacturing facility in Dongen. The manufacturing line was setup with Krupp Corpoplast forming equipment from their facility in Hamburg, Germany. PLM and Petainer (related companies) did the preform injection and operated the equipment to make the 12oz PET cans. American Fuji Seal PVC sleeving systems were used to apply the sleeve decoration over the upside down can, which were then heat-shrunk in place on the PET can body.

19. Petainer would ship the PET can body from its plant in Dongen, Netherlands to Coca-Cola's canning line in Columbus, Georgia, where I spent most of

my time as project manager for PCAN to oversee completion of the finished product before it was distributed for sale to the public.

20. After the PET can body was received by Coca-Cola at its Columbus, Georgia canning line, Coca-Cola Bottling of Columbus, GA would fill the container with one of the formulas and would seal the container with a standard aluminum SOT (stay on tab) top. The PET cans were distributed via route trucks to retailers in Western Georgia and Eastern Alabama. Supermarkets like Winn Dixie and Piggly Wiggly carried them, along with convenience stores in the region.

21. The goal of the PCAN project was to develop a PET can that was interchangeable with the existing 12oz aluminum can. The PET can is very close in shape and size to the existing 12oz aluminum can and mimicked its profile, but it was taller because of the base. Specifically, due to the pressure of a carbonated beverage and the material strength of PET, the “pushup” base at the bottom of the can (i.e., the deformation in the bottom of the can that extends up into the PET can body) was larger than the pushup portion of the base of the aluminum can.

22. The minor changes in the shape of the PET can body did not materially affect the filling and assembly process at Coca-Cola’s Columbus, Georgia facilities but a few adjustments were made. Specifically, the seamer and filler heights were adjusted up to account for the taller PET cans versus aluminum cans. The chuck and rolls in the seamer were also changed to a new specification and geometry we

developed with the Angelus Company, based in California. The rest of the canning line ran normally, and the PET cans were palletized like aluminum cans. After they were filled and assembled, the PET cans were arranged into six-packs and put into corrugated trays of four six-packs (i.e., twenty-four cans per tray) and palletized for distribution.

23. When the PET cans go into the filler, a pressure seal is created and a counter pressure from the bowl CO<sub>2</sub> gas is flushed to equilibrate the can pressure to the bowl. After the carbonated beverage is filled, the CO<sub>2</sub> is snifted and the filled cans move to the seamer where an aluminum lid is attached. The flange is necessary during this process, so that the product is sealed in the filler and counter pressure is maintained.

24. Part of the filling and assembly process also included sealing the filled product with the aluminum lid. At the top of the PET can body, there was a flange or lip, which was very important to maintain a seal between the PET body and top of the can. The flange was not at a right angle but did angle away from the body of the PET can to receive the lid. The aluminum lid is slightly larger than the flange on the PET can body, which allowed it to be folded over part of the flange to create a seal referred to as double seaming, where two components create an overlap seal

and the compound in the end is compressed to create a liquid and gas seal. The flange can be seen in the close-up image<sup>4</sup> of the unfilled container below:



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<sup>4</sup> This image was taken by MPL's counsel. It is consistent with my personal knowledge of the assembly process for Coca-Cola's PET cans and shows the seal resulting from the double seaming process.

The containers used for the Coca-Cola PET cans in 1985 had this same flange.

25. After the PET can products were filled and assembled by Coca-Cola's Columbus, Georgia canning line, they were ready for commercial distribution.

#### **IV. COMMERCIALIZATION AND SALE OF COCA-COLA PET CAN**

26. Coca-Cola went to market with four products in its PET can, starting in October 1985—Coca-Cola Classic, “New Coke,” Diet Coke, and Sprite.

27. As an aside, “New Coke” was a product developed by Coca-Cola in the 1980s and publicly released in 1985, where Coca-Cola made modifications to its classic formula. This product was subsequently branded as “New Coke” when Coca-Cola resumed selling the original formula under the label “Coke Classic.” New Coke was only sold for a limited time before Coca-Cola discontinued its manufacture and sale. New Coke was a secret project for Coca-Cola. I was at Petainer's manufacturing plant in Dongen when I received notice in May 1985 that Coca-Cola was going to sell New Coke in a PET can. We had not anticipated this product, so sleeve labels were shipped to us from the U.S., and we began to use them for New Coke. In July 1985, we got another batch of labels to use, which were marked as Coca-Cola Classic and were used for PET cans with Coca-Cola's classic formula.

28. The four Coca-Cola products in PET cans were sold in six-packs throughout Western Georgia and Eastern Alabama for around a six-month period, starting in October 1985. During this time, they were distributed and sold through

the general grocery store trade, meaning that they were sold in grocery stores (e.g., Winn Dixie), vending machines, and other places in Western Georgia and Eastern Alabama where canned Coca-Cola products were available for sale. I personally saw these four Coca-Cola products in PET cans available for purchase at grocery stores in Columbus, Georgia. I lived in the region where Coca-Cola PET cans were sold and was a frequent visitor to stores to inspect the cans and the in-store displays for any performance related issues.

29. There were also reverse vending machines for collection, where people could return their empty PET cans so that they could be recycled.

30. As I state above, Coca-Cola PET can products were only on sale for around six months starting in October 1985. Development and release of PET cans for Coca-Cola (instead of the standard two-liter PET bottles that Coca-Cola also manufactured) had supply chain implications. After release of the PET can, aluminum can manufacturers began lobbying against these products. The main theme of their campaign was that these products were not recyclable like aluminum cans. The aluminum industry, aka Alcoa, Reynolds and sheet producers, and can producers began a lobbying effort with interviews, NPR pieces and paying environmental lobbyists to speak out against the PET can.

31. After this lobbying campaign, Coca-Cola management decided to stop selling PET cans and used the 12oz aluminum cans going forward to protect the large market served by two-liter plastic bottles.

## **V. VERIFICATION OF PRODUCTS AND LITERATURE**

32. As a former longtime employee of Coca-Cola, I have a collection of Coca-Cola products, including products that I worked on during my time at Coca-Cola. My collection includes multiple Coca-Cola PET cans that were manufactured and sold during the, around, six-month period that these products were publicly available in 1985 and 1986.

33. Each PET can filled and assembled in the Columbus, Georgia facility bore a label that stated “CANNED UNDER THE AUTHORITY OF THE COCA-COLA COMPANY, ATLANTA GA. BY COLUMBUS COCA-COLA BOTTLING COMPANY, COLUMBUS, GA 31908. The labels further were labeled “CONSUMER/RECYCLING INFORMATION CALL 1-800-GET-COKE (438-2053)” and bore a bar code unique to the beverage being sold to aid in supermarket scanning.

34. As I mentioned above, each PET can also included a mark on the pushup portion of the base that identified Petainer S.A. as the manufacturer of the PET can body.

35. I understand that MPL and its counsel are in possession of several Coca-Cola PET cans, including a Sprite, Diet Coke, Coca-Cola Classic, and New Coke can. I have reviewed images of these products, which I understand are exhibits to MPL's petition and have compared them to the Coke PET cans from 1985 that I have in my personal collection. They have PETAINER on the base in CAPS and the patent # PAT 4,405,546 and other designs.

36. Based on the markings of the PET can products in possession of MPL and a comparison of these products to the ones in my possession, I can verify that the Coca-Cola PET cans that I understand were submitted as prior art in this PGR proceeding by MPL are the same products that were commercialized by Coca-Cola in 1985 and 1986 and were publicly available to consumers for purchase. These cans have the same shape and markings that I describe above, which confirms that they were filled and assembled in Coca-Cola's Columbus, Georgia facility from 1985 to 1986.

37. I also understand that MPL and its counsel are in possession of a paper advertisement about Coca-Cola's PET cans. I have a copy of this advertisement in my personal collection of Coca-Cola products and memorabilia. This advertisement was produced by Coca-Cola in 1985 as part of an educational campaign about the PCAN project. Specifically, it was produced and distributed to help explain to consumers what the PET can technology was, the functionality of the PET can and

whether it is recyclable. This advertisement was also publicly available during the around six-month period that Coca-Cola's PET can products were sold in Western Georgia and Eastern Alabama. In some grocery stores, these pamphlets would be included in a display next to the PET cans for sale so that consumers could take a pamphlet and read about the PET can.

38. I understand that this advertisement is included as an exhibit to MPL's post-grant review Petition. I have reviewed that exhibit and can verify that this is the same advertisement that was publicly available and distributed by Coca-Cola in 1985 and 1986, and it bears a copyright date of 1985. This advertisement also has the same content as the one in my possession.

## **VI. ADDITIONAL REMARKS**

39. In signing this Declaration, I recognize that it will be filed as evidence in a contested case before the Patent Trial and Appeal Board of the United States Patent and Trademark Office. I also recognize that I may be subject to cross-examination in the case.

40. I declare under penalty of perjury that the foregoing is true and correct. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on my understanding are believed to be true; and further that these statements were made with the knowledge that willful false statements and

the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Dated May 31, 2024

A handwritten signature in blue ink, appearing to read "Joseph T. Norris". The signature is fluid and cursive, with the first name "Joseph" and last name "Norris" clearly legible.

Joseph T. Norris

# APPENDIX A

Contact

www.linkedin.com/in/joe-norris-006a9b12 (LinkedIn)

Top Skills

Packaging research, design and engineering  
Ideation  
Consumer guidance research

Joe Norris

Packaging Strategies and Solutions LLC  
Cumming, Georgia, United States

Summary

Beginning June 30, 2013 I am taking early retirement from The Coca-Cola Company after 35+ years in the consumer goods packaging industry, package development and commercialization and Research and Development.

I have established Packaging Strategies and Solutions LLC in Atlanta as a consulting company and look forward to my new challenges in the packaging industry. I welcome new opportunities , such as my current work with Smart Skin Technologies of Fredericton, Canada and their new Drone technology.

Experience

Smart Skin Technologies  
New Product Development and Technical Service  
September 2013 - Present (10 years 9 months)  
Fredericton, Canada

The Coca-Cola Company  
Principal Engineer, Global Packaging R and D,  
October 2005 - June 2013 (7 years 9 months)

My work over the last few years has focused on early concept ideation, design, alpha engineering and early consumer engagement to validate ideas and deliver a new packaging system to the sparkling and still portfolio. This work was embedded within Global R and D and supported the operating groups and business units with a packaging portfolio pipeline and packaging technology support.

My recent focus was also on commercialization of North American aluminum bottles and it's resealable closure. There was deep learning about bottle manufacturing, thread formation and closure application and machinery, which were needed to successfully manufacture the bottle and apply the closure correctly.

I have 16 issued patents issued and several applications still pending , both with Colgate-Palmolive and The Coca-Cola Company.

### Colgate Palmolive Co

Assoc. Dir. Oral Care and Director , Package Innovation

1990 - October 2005 (15 years)

New York City and Piscataway, New Jersey

For 10 years, I supported Colgate US brands and manufacturing with package engineering leadership. I managed a team of three engineers with responsibility for Colgate toothpaste, toothbrushes and associated brands and products. In 1997, our team led the materials development and approval for the successful Total toothpaste launch. I won one Presidents Award for a Wal-Mart promotion and multiple You can Make a Difference awards.

For 5 years, I led a team of five package engineers in Global Packaging to support global brand and package technology innovation initiatives, and won the Global Technology award in 2001 for dual tube commercialization. My team had 25 patent applications during these five years and I was a member of the R and D Innovation Committee.

### The Coca-Cola Company

Packaging Engineer

October 1977 - August 1990 (12 years 11 months)

Atlanta and London

Package engineering and commercialization of PET bottles, cans, closures and labelling systems for Coca-Cola International, Coca-Cola Northern Europe and Coca-Cola USA, supporting bottlers, package converters and new brand introductions plus quality troubleshooting when required.

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## Education

### Union College

BSME, Mechanical Engineering , Materials Science · (1973 - 1976)

### Chaminade High School

High School, College/University Preparatory and Advanced High School/

Secondary Diploma Program · (1969 - 1973)