

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

ADVEC, INC. a Canadian corporation,

Plaintiff,

v.

CASE NO.:

VECTOR BIOSYSTEMS, INC., d/b/a
VECTOR BIOLABS, a Pennsylvania
corporation,

JURY TRIAL DEMANDED

Defendant.

COMPLAINT

Plaintiff, ADVEC, INC. (“Plaintiff” or “ADVEC”) by and through its undersigned counsel, files this Complaint against VECTOR BIOSYSTEMS, INC., d/b/a VECTOR BIOLABS (“VB” or “Defendant”) as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant’s willful infringement of Plaintiff’s United States Patent No. 6,120,764 entitled “*Adenovirus for control of gene expression*” (the “764 patent”) (a copy of which is attached hereto as Exhibit “A”). Plaintiff seeks injunctive relief and monetary damages against Defendant.

PARTIES

2. Plaintiff, ADVEC, INC. is a corporation organized and existing under the laws of Canada with a principal address at 259 Wilson Street East, Ancaster, Ontario, L9G 2B8, Canada.

3. Defendant, VECTOR BIOSYSTEMS, INC., d/b/a VECTOR BIOLABS is a corporation organized and existing under the laws of the state of Pennsylvania. VB has a principal place of business located at 3624 Market Street, Suite 5E, Philadelphia, PA 19104.

JURISDICTION AND VENUE

4. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 154(d), 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C §1121.

5. This Court has personal jurisdiction over Defendant, VB pursuant to Fla. Stat. §48.193(1)(b) and §48.193(2) because VB committed a tortious act within this state and Defendant engages in substantial and not isolated activity here in that Defendant offers to sell and sells a variety of its products here. Specifically, Defendant has used, sold and/or offered to sell in Florida products that infringe at least one claim of the ‘764 Patent and has contributed to patent infringement in Florida or induced other to commit patent infringement in Florida. Defendant’s products have also been used during numerous studies at the University of Florida, which is located in this District. Finally, Defendant also sells and offers to sell the infringing products via its interactive website.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 139(b)(1) and (2) and 1400(b) because a substantial part of the events or omissions giving rise to the claims occurred in this district and because Defendant has committed a tort in this District by infringing on the ‘764 Patent.

FACTUAL BACKGROUND

7. ADVEC is the true and rightful owner of the '764 Patent which covers a class of adenovirus vectors for delivering recombinases to a large number of cells of different origins, and methods for regulating the expression of a gene in transfected mammalian cells in culture and in cells of transgenic animals, comprising infecting said cells with an Ad vector encoding a recombinase whose target site is present at or adjacent to the gene, wherein the action of the recombinase regulates the expression of said gene.

8. ADVEC has licensees all across the U.S. and abroad that have licensed the technology and methods claimed in the '764 Patent.

9. On January 29, 2013, Canadian counsel for ADVEC sent a letter to VB informing VB of the '694 Patent and the fact that VB's sales of at least 15 vector expressing Cre or FLP, infringes the '694 Patent. *See Exhibit "B."*

10. On March 11, 2013, Canadian counsel followed-up informing VB that it had inadvertently referenced the wrong patent number and that the correct patent number is the '764 Patent not the '694 Patent. *See Exhibit "C."*

11. On June 5, 2013 Canadian counsel for ADVEC sent a follow-up letter to VB, but ADVEC has received no response of any kind from VB to any of the abovementioned letters. *See Exhibit "D."*

12. VB is making, using, offering for sale and selling adenovirus vectors that are infringing one or more claims of the '764 patent literally and/or through the doctrine of equivalents.

13. At the very least, VB's Ad-FLPe (Cat. No. 1760) and Ad-CMV-Cre (Cat. No. 1045) are infringing Claims 1, 5, 18 and 21 of the '764 Patent.

14. Plaintiff has been damaged as a result of Defendant's activities described herein.

15. Plaintiff has performed all conditions precedent to be performed by Plaintiff or the conditions have occurred.

16. Plaintiff has been forced to retain the law firm of Beusse Wolter Sanks Mora & Maire, P.A. for representation in this action.

COUNT I
DIRECT PATENT INFRINGEMENT

17. Plaintiff repeats and makes a part hereof each and every allegation contained in paragraphs 1 through 16 of the Complaint.

18. Plaintiff is the owner of United States Patent No. 6,120,764 (the '764 Patent) at all times material hereto. *See* Exhibit "A."

19. The '764 Patent is for a class of adenovirus vectors for delivering recombinases to a large number of cells of different origins, and methods for regulating the expression of a gene in transfected mammalian cells in culture and in cells of transgenic animals, comprising infecting said cells with an Ad vector encoding a recombinase whose target site is present at or adjacent to the gene, wherein the action of the recombinase regulates the expression of said gene.

20. Defendant, VB's manufactures, promotes, advertises, offers for sale and sells adenovirus vectors that infringe one or more claims of the '764 Patent either literally or through the doctrine of equivalents.

21. Defendant's aforesaid activities have been without authority and/or license from Plaintiff and are considered intentional and willful.

22. Plaintiff is entitled to recover from the Defendant the damages sustained by Plaintiff as a result of the Defendant's wrongful acts in an amount subject to proof at trial, which,

by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

23. Defendant's infringement of Plaintiff's exclusive rights under the '920 Patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

JURY DEMAND

Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

- A. An adjudication that Plaintiff's rights in the '764 Patent is valid and enforceable;
- B. An adjudication that one or more claims of the '764 Patent have been infringed, either literally and/or under the doctrine of equivalents, by Defendant;
- C. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendant's acts of infringement together with pre-judgment and post-judgment interest;
- D. An award of Defendant's profits from the sale of the infringing adenovirus vectors;
- E. A grant of permanent injunction pursuant to 35 U.S.C. § 283 and 15 U.S.C. §1117, enjoining the Defendant, its agents, employees, officers, attorneys, successors, assigns, and all persons in active concert or participation with them from further acts of infringement of the '764 Patent and from making, using, offering or sale or selling any adenovirus vectors that

infringe one or more of the independent claims of the '764 Patent either literally or under the doctrine of equivalents;

F. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. §285; and

G. Any further relief that this Court deems just and proper.

DATED this 1st day of November, 2013.

Respectfully submitted,

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