

**UNITED STATES DISTRICT COURT
IN THE DISTRICT OF MASSACHUSETTS**

ASYMMETRX, INC.

Plaintiff,

v.

BIOCARE MEDICAL LLC; EMD
BIOSCIENCES, INC.; LAB VISION
CORP.; SIGMA CHEMICAL CO.; and
SANTA CRUZ BIOTECHNOLOGY, INC.

Defendants.

Civil Action No: _____

COMPLAINT AND JURY DEMAND

AsymmetRx, Inc. (“AsymmetRx”), by its attorneys Proskauer Rose LLP, brings this action for patent infringement against Biocare Medical LLC (“Biocare”), EMD Biosciences, Inc. (“EMD Biosciences”), Lab Vision Corporation (“Lab Vision”), Sigma Chemical Company (“Sigma”), and Santa Cruz Biotechnology, Inc. (“Santa Cruz”) (collectively “Defendants”).

THE PARTIES

1. AsymmetRx is a corporation with its headquarters located at 117 Senate Brook Drive, Amston, Connecticut 06231.

2. On information and belief, Biocare is a limited liability company with a main office at 4040 Pike Lane, Concord, California 94520.

3. On information and belief, EMD Biosciences is a corporation with a main office at 10394 Pacific Center Court, San Diego, California 92121.

4. On information and belief, Lab Vision is a corporation with a main office at 47777 Warm Springs Boulevard, Fremont, California 94539.

5. On information and belief, Sigma is a corporation with a main office at 3050 Spruce Street, St. Louis, Missouri 63103.

6. On information and belief, Santa Cruz is a corporation with a main office at 2145 Delaware Avenue, Santa Cruz, California 95060.

JURISDICTION AND VENUE

7. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, 1338 and 2201.

9. On information and belief, this Court has personal jurisdiction over each of the Defendants because they sell, offer to sell, and distribute p63 antibodies used in the diagnosis of prostate cancer in Massachusetts and/or are regularly engaged in business in Massachusetts.

10. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) & (c), and 1400.

BACKGROUND FACTS

11. AsymmetRx is a drug discovery/development and medical device company with antibody-based technologies in the fields of cancer and other diseases. Founded in 2001, AsymmetRx holds an exclusive license to patents covering p63 specific antibodies and the use of p63 antibodies to diagnose prostate and other cancers. AsymmetRx has received 510(k) clearance from the FDA for the use of p63 antibodies in an *in vitro* test for diagnosing prostate cancer.

12. U.S. Patent No. 6,946,256 (“the ‘256 Patent”) and U.S. Patent No. 7,030,227 (“the ‘227 Patent”) are assigned to the President and Fellows of Harvard College.

13. AsymmetRx is the exclusive licensee of the '256 and '227 Patents in the commercial diagnostic field and has the right to prosecute in its own name any infringement of these patents within the diagnostic field.

14. The '256 Patent was duly issued by the United States Patent and Trademark Office, and is valid and enforceable. Attached hereto as Exhibit 1 is copy of the '256 Patent.

15. The '227 Patent was duly issued by the United States Patent and Trademark Office, and is valid and enforceable. Attached hereto as Exhibit 2 is copy of the '227 Patent.

COUNT I
Biocare's Infringement of the '256 and '227 Patents

16. The allegations of paragraphs 1 through 15 are incorporated by reference into this Count I as though fully set forth herein.

17. On information and belief, Biocare has a limited non-exclusive license from Harvard for the sale of p63 antibodies for research use only.

18. On information and belief, Biocare makes, uses, offers to sell, and sells within the United States, and/or imports into the United States, products that infringe, contribute to the infringement of, and/or induce the infringement of one or more claims of the '256 Patent in the diagnostic and/or therapeutic markets, outside the scope of its limited license.

19. On information and belief, Biocare makes, uses, offers to sell, and sells within the United States, and/or imports into the United States, products that infringe, contribute to the infringement of, and/or induce the infringement of one or more claims of the '227 Patent in the diagnostic and/or therapeutic markets, outside the scope of its limited license.

20. On information and belief, Biocare's infringing activity has been, and continues to be done, with knowledge of the '256 and '227 Patents and is willful conduct that would result in enhanced damages under 35 U.S.C. § 284.

21. AsymmetRx has been, and is being, irreparably harmed and has incurred, and will continue to incur, damages as a result of Biocare's infringement of the '256 and '227 Patents.

COUNT II
EMD Biosciences' Infringement of the '256 and '227 Patents

22. The allegations of paragraphs 1 through 15 are incorporated by reference into this Count II as though fully set forth herein.

23. On information and belief, EMD Biosciences has a limited non-exclusive license from Harvard for the sale of p63 antibodies for research only.

24. On information and belief, EMD Biosciences makes, uses, offers to sell, and sells within the United States, and/or imports into the United States, products that infringe, contribute to the infringement of, and/or induce the infringement of one or more claims of the '256 Patent in the diagnostic and/or therapeutic markets, outside the scope of its limited license.

25. On information and belief, EMD Biosciences makes, uses, offers to sell, and sells within the United States, and/or imports into the United States, products that infringe, contribute to the infringement of, and/or induce the infringement of one or more claims of the '227 Patent in the diagnostic and/or therapeutic markets, outside the scope of its limited license.

26. On information and belief, EMD Biosciences' infringing activity has been, and continues to be done, with knowledge of the '256 and '227 Patents and is willful conduct that would result in enhanced damages under 35 U.S.C. § 284.

27. AsymmetRx has been, and is being, irreparably harmed and has incurred, and will continue to incur, damages as a result of EMD Biosciences' infringement of the '256 and '227 Patents.

COUNT III
Lab Vision's Infringement of the '256 and '227 Patents

28. The allegations of paragraphs 1 through 15 are incorporated by reference into this Count III as though fully set forth herein.

29. On information and belief, Lab Vision has a limited non-exclusive license from Harvard for the sale of p63 antibodies for research use only.

30. On information and belief, Lab Vision makes, uses, offers to sell, and sells within the United States, and/or imports into the United States, products that infringe, contribute to the infringement of, and/or induce the infringement of one or more claims of the '256 Patent in the diagnostic and/or therapeutic markets, outside the scope of its limited license.

31. On information and belief, Lab Vision makes, uses, offers to sell, and sells within the United States, and/or imports into the United States, products that infringe, contribute to the infringement of, and/or induce the infringement of one or more claims of the '227 Patent in the diagnostic and/or therapeutic markets, outside the scope of its limited license.

32. On information and belief, Lab Vision's infringing activity has been, and continues to be done, with knowledge of the '256 and '227 Patents and is willful conduct that would result in enhanced damages under 35 U.S.C. § 284.

33. AsymmetRx has been, and is being, irreparably harmed and has incurred, and will continue to incur, damages as a result of Lab Vision's infringement of the '256 and '227 Patents.

COUNT IV
Sigma's Infringement of the '256 and '227 Patents

34. The allegations of paragraphs 1 through 15 are incorporated by reference into this Count IV as though fully set forth herein.

35. On information and belief, Sigma has a limited non-exclusive license from Harvard for the sale of p63 antibodies for research use only.

36. On information and belief, Sigma makes, uses, offers to sell, and sells within the United States, and/or imports into the United States, products that infringe, contribute to the infringement of, and/or induce the infringement of one or more claims of the '256 Patent in the diagnostic and/or therapeutic markets, outside the scope of its limited license.

37. On information and belief, Sigma makes, uses, offers to sell, and sells within the United States, and/or imports into the United States, products that infringe, contribute to the infringement of, and/or induce the infringement of one or more claims of the '227 Patent in the diagnostic and/or therapeutic markets, outside the scope of its limited license.

38. On information and belief, Sigma's infringing activity has been, and continues to be done, with knowledge of the '256 and '227 Patents and is willful conduct that would result in enhanced damages under 35 U.S.C. § 284.

39. AsymmetRx has been, and is being, irreparably harmed and has incurred, and will continue to incur, damages as a result of Sigma's infringement of the '256 and '227 Patents.

COUNT V
Santa Cruz's Infringement of the '256 and '227 Patents

40. The allegations of paragraphs 1 through 15 are incorporated by reference into this Count V as though fully set forth herein.

41. On information and belief, Santa Cruz has a limited non-exclusive license from Harvard for the sale of p63 antibodies for research use only.

42. On information and belief, Santa Cruz makes, uses, offers to sell, and sells within the United States, and/or imports into the United States, products that infringe, contribute to the

infringement of, and/or induce the infringement of one or more claims of the '256 Patent in the diagnostic and/or therapeutic markets, outside the scope of its limited license.

43. On information and belief, Santa Cruz makes, uses, offers to sell, and sells within the United States, and/or imports into the United States, products that infringe, contribute to the infringement of, and/or induce the infringement of one or more claims of the '227 Patent in the diagnostic and/or therapeutic markets, outside the scope of its limited license.

44. On information and belief, Santa Cruz's infringing activity has been, and continues to be done, with knowledge of the '256 and '227 Patents and is willful conduct that would result in enhanced damages under 35 U.S.C. § 284.

45. AsymmetRx has been, and is being, irreparably harmed and has incurred, and will continue to incur, damages as a result of Santa Cruz's infringement of the '256 and '227 Patents.

PRAYER FOR RELIEF

WHEREFORE, AsymmetRx prays for judgment against Defendants as follows:

(a) Declaring that Defendants Biocare, EMD Biosciences, Lab Vision, Sigma and Santa Cruz have infringed, and continue to infringe, the '256 and '227 Patents;

(b) Declaring that Defendants' actions have been, and continue to be, willful and deliberate;

(c) Ordering that each of the Defendants, their officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with Defendants, be preliminarily and permanently enjoined and restrained from further infringing the '256 and '227 Patents;

(d) Awarding AsymmetRx all relief available under the patent laws of the United States, including but not limited to monetary damages, including prejudgment interest and enhanced damages based on Defendants' willful infringement of the '256 and '227 Patents;

(e) Awarding AsymmetRx its costs and reasonable attorney's fees in respect thereto in accordance with 35 U.S.C. §§ 284 and 285; and

(f) Granting AsymmetRx such other relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

AsymmetRx demands a trial by jury on all issues so triable.

Dated: June 27, 2007

Respectfully Submitted,

PLAINTIFF ASYMMETRX, INC.

By Its Attorneys,

/s/ Steven M. Bauer

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