IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

C T E GLOBAL, INC., Plaintiff, v. NOVOZYMES A/S and NOVOZMYES NORTH AMERICA, INC., Defendants.	)	Civil Action No. JURY TRIAL DEMANDED

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, C T E Global, Inc. ("CTE"), alleges as follows:

Nature of the Action

1. Defendants have two patents that purport to cover an isolated naturally-occurring enzyme. Because the patents purport to cover a product of nature and the U.S. Supreme Court in *Ass'n for Molecular Pathology v. Myriad Genetics Inc.*, 133 S. Ct. 2107 (2013), has clarified that isolated natural products are not patent eligible, the patents are clearly invalid under 35 U.S.C. §101.

2. Despite the fact that the patents are clearly invalid, Defendants are using them as weapons to intimidate Plaintiff and its customers, and to stifle lawful competition.

3. This action seeks, *inter alia*, to clear the way for Plaintiff's current and future products by eliminating these invalid patents.

Parties

4. Plaintiff C T E Global, Inc. is an Illinois corporation with its principal place of business at 40 Skokie Blvd., Suite 460, Northbrook, Illinois 60062.

5. On information and belief, Defendant Novozymes A/S is a Danish corporation with its principal place of business at Krogshoejvej 36, DK-2880 Bagsvaerd, Denmark. Novozymes A/S is a global company that sells its products worldwide.

6. On information and belief, Defendant Novozymes North America, Inc. is a New York corporation with its principal place of business at 77 Perry Chapel Church Road, Franklinton, North Carolina. On information and belief, Novozymes North America, Inc. is a subsidiary of Novozymes A/S. Defendants shall hereinafter be referred to collectively as "Novozymes."

Jurisdiction and Venue

7. This is an action for Declaratory Judgment under 28 U.S.C. §§ 2201 and 2202 arising from an actual controversy between the parties with regard to the invalidity and non-infringement of U.S. Patent Nos. 6,255,084 (the "'084 patent") and 7,060,468 (the "'468 patent").

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 2201 and 2202 and 28 U.S.C. §§ 1331, 1332, and 1338(a).

9. This Court has personal jurisdiction over Novozymes because it conducts regular and substantial business activities in the State of Illinois and in this judicial district. On information and belief, Novozymes has a sales representative located in Bolingbrook, Illinois. Moreover, Novozymes has chosen to avail itself of this Court to enforce the '084 and '468 patents against CTE.

10. Venue in this District is proper pursuant to 28 U.S.C. § 1391(b) and (c), including because a substantial part of the events giving rise to the claim occurred in this judicial district.

The Parties' Prior Dispute and Settlement

11. On information and belief, Novozymes A/S owns the '084 patent and the '468 patent. On information and belief, Novozymes North America, Inc. is a licensee of the '084 patent and the '468 patent.

12. The '084 patent and the '468 patent purport to cover certain thermostable glucoamylase.

13. CTE imports and sells, but does not manufacture, glucoamylase products.

14. On June 23, 2011, Novozymes filed a complaint against CTE in this district, asserting infringement of the '084 and '468 patents based on CTE's sales of certain glucoamylase products, namely GLUCOAMYL L706+ and GLUCOAMYL LG20. The complaint did not name CTE's other glucoamylase product available at that time, GLUCOAMYL L209.

15. On August 20, 2012, the parties entered into a Settlement Agreement.

16. The terms of the Settlement Agreement included the entry of a Stipulated Consent Judgment and Permanent Injunction that incorporated some of the terms of the Settlement Agreement. The Court entered the Consent Judgment on September 11, 2012.

17. The terms of the Consent Judgment were specifically directed to those GLUCOAMYL L706+ and GLUCOAMYL LG20 products that were manufactured by Shandong Longda Bio-products Co. Ltd. ("Shandong"). The terms were not specifically directed to any other CTE products, including GLUCOAMYL L209 that Novozymes excluded from the litigation.

CTE's New Products

18. Pursuant to the entry of the Consent Judgment, CTE ceased selling GLUCOAMYL L706+ and GLUCOAMYL LG20 and launched a series of new glucoamylase products into the market.

19. CTE is currently offering for sale three products containing a glucoamylase enzyme — GLUCOAMYL L209, GLUCOAMYL L209+, and GLUCOAMYL L561. Each of these products is materially different in composition and function than those GLUCOAMYL L706+ and GLUCOAMYL LG20 products that the parties agreed were infringing in the prior settlement.

20. By way of background, the '084 and '468 patents are directed to thermostable enzymes isolated from the fungus *Talaromyces emersonii.* In contrast, CTE's current glucoamylase products contain proteins obtained from the fungus *Aspergillus niger.* Glucoamylase products isolated from *Aspergillus niger* have been commercially available since at least 1983, well more than one year prior to the filing of the patent applications that resulted in the '084 and '468 patents. *See* U.S. Patent No. 4,536,447, Table II. Indeed, the '084 patent distinguishes the claimed *T. emersonii* glucoamylase over the prior art *A. niger* glucoamylase and asserts that the *A. niger* glucoamylase is inferior because it lacks thermostability. *See* '084 patent, Fig. 4.

21. Thus, as detailed below, each of CTE's current products is materially different than the products at issue in the prior lawsuit.

22. GLUCOAMYL L209: Novozymes was aware of GLUCOAMYL L209 in connection with the prior lawsuit and chose not to accuse the product of infringement. It is not produced by Shandong, the manufacturer at issue in the Consent Judgment. Moreover, CTE has

sought and received assurances from the manufacturer that it does not infringe the '084 patent or the '468 patent, and that is derived from the fungus *Aspergillus niger*.

23. GLUCOAMYL L209+: CTE has sought and received assurances from manufacturer Shandong that GLUCOAMYL L209+ does not infringe the '084 patent or the '468 patent. Moreover, CTE has obtained a certificate from the China Center of Industrial Culture Collection that GLUCOAMYL L209+ is derived from the fungus *Aspergillus niger*.

24. GLUCOAMYL L561: GLUCOAMYL L561 is not produced by Shandong, the manufacturer at issue in the Consent Judgment. It is produced by another manufacturer that was in no way involved in the previous litigation. CTE has sought and received assurances from that manufacturer that GLUCOAMYL L561 does not infringe the '084 patent or the '468 patent. Moreover, CTE has obtained a certificate from the China Center of Industrial Culture Collection that GLUCOAMYL L561 is derived from the fungus *Aspergillus niger*.

The Present Case and Controversy

25. On December 15, 2014, Novozymes filed a motion in this district accusing CTE of violating the Consent Judgment by selling and offering for sale in the United States products containing glucoamylase enzymes.

26. While Novozymes' motion only specifically references GLUCOAMYL L209+, Novozymes has asserted in the litigation that "the scope of relevant evidence is not limited to L209+" and that it is seeking discovery and testing regarding "all ... glucoamylase products in [CTE's] possession, custody, and control." Thus, there is a present case or controversy with respect to CTE's entire glucoamylase business, including GLUCOAMYL L209, GLUCOAMYL L209+, and GLUCOAMYL L561.

27. Since filing its motion, Novozymes has been contacting CTE customers accusing CTE of having no respect for intellectual property rights and suggesting that CTE products will

soon be removed from the market. In doing so, Novozymes has cast a cloud over the entirety of CTE's glucoamylase business, including GLUCOAMYL L209, GLUCOAMYL L209+, and GLUCOAMYL L561.

28. Novozymes has also taken the position in open court that the Consent Judgment requires that CTE to perform amino acid sequence testing on all of its current and future glucoamylase products "continuously as it's been sold." To be forced to perform continuous testing of this type on all products, even where CTE has no reason to believe the products are infringing, would be financially crippling. Moreover, it is an entirely unnecessary and inappropriate burden given that the patents are invalid.

29. CTE merely seeks to lawfully compete in the glucoamylase market. It agreed to stop selling certain products, and it did so. But Novozymes' ongoing attempt to stifle competition, impose unnecessary and inappropriate burdens, and cast a cloud over CTE's entire glucoamylase business based on invalid patents must be stopped.

Count I — Declaration of Invalidity

30. CTE realleges and incorporates herein the preceding paragraphs 1-29.

31. All claims of the '084 and '468 patents are invalid for failing to comply with one or more requirements of 35 U.S.C. §§ 101, 102, 103, and/or 112.

Count II — Declaration of Non-Infringement

32. CTE realleges and incorporates herein the preceding paragraphs 1-29.

33. CTE does not infringe, contribute to the infringement of, or induce the infringement of, any valid claim of either the '084 or '468 Patents.

Prayer for Relief

WHEREFORE, CTE prays for judgment against Defendants as follows:

A. Declaring that the '084 and '468 patents are not infringed by CTE;

B. Declaring that the '084 and '468 patents are invalid;

C. Awarding to CTE its reasonable attorneys' fees, expenses and costs in this action; and

D. Awarding such other and further relief as the Court deems just and equitable.

Jury Demand

CTE demands a jury trial on all issues so triable.

C T E GLOBAL, INC.

By: /s/Kevin C. May
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