

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

2010 DEC 17 P 3:09

FRED HUTCHINSON CANCER
RESEARCH CENTER; ARGUS
GENETICS, LLC; AND MARS, INC.,

Plaintiffs,

v.

MMI GENOMICS, INC.,

Defendant.

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CLERK OF DISTRICT COURT
ALEXANDRIA, VIRGINIA

C.A. No. 2-10CV 615
RGD/FBS

COMPLAINT

Plaintiffs Fred Hutchinson Cancer Research Center; Argus Genetics, LLC; and Mars, Inc. (collectively, "Plaintiffs"), for their Complaint against Defendant MMI Genomics, Inc. ("MMI Genomics"), hereby allege as follows:

PARTIES

1. Plaintiff Fred Hutchinson Cancer Research Center (hereinafter, "FHCRC") is a private, non-profit corporation organized and existing under the laws of the State of Washington, having a principal place of business at 1100 Fairview Ave. N., Seattle, Washington 98109.

2. Plaintiff Argus Genetics, LLC (hereinafter, "Argus") is a company organized and existing under the laws of the State of Washington, having a principal place of business at 1616 Eastlake Ave. E., Seattle, Washington 98109.

3. Plaintiff Mars, Inc. (hereinafter, "Mars") is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 6885 Elm Street, McLean, Virginia 22101.

4. Upon information and belief, Defendant MMI Genomics is a Delaware corporation having a principal place of business at 1756 Picasso Avenue, Davis, California 95616.

NATURE OF THE ACTION

5. This is a civil action for infringement of United States Patent No. 7,729,863 (“the ‘863 Patent”). (Exhibit A). This action is based upon the Patent Laws of the United States, 35 U.S.C. § 100 *et seq.*

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a).

7. Venue is proper in this District under Title 28 U.S.C. §§ 1391 and 1400(b), because, *inter alia*, MMI Genomics is subject to personal jurisdiction in this judicial district and has committed acts of infringement in this judicial district.

8. Personal jurisdiction exists over MMI Genomics because, upon information and belief, it has sufficient minimum contacts with the forum as a result of business conducted within the Commonwealth of Virginia and within this judicial district. Personal jurisdiction also exists over MMI Genomics because, upon information and belief, it has sold and offered to sell infringing services and products required for it to perform those infringing services in this district or, upon information and belief, has placed those products into the stream of commerce by either shipping those products into this judicial district or knowing that the products would be shipped into this judicial district, and such services and products therefore have been offered, purchased, and sold in this judicial district.

THE PATENT-IN-SUIT

9. On June 1, 2010, the '863 Patent, entitled "Methods and Materials for Canine Breed Identification" was duly and legally issued to FHCRC as assignee.

10. FHCRC is the current assignee of the '863 Patent.

11. Argus, pursuant to an exclusive license it obtained from FHCRC for the '863 Patent, has the right to sue and recover for any infringement of the '863 Patent.

12. Mars, pursuant to an exclusive sublicense it obtained from Argus for the '863 Patent, has the right to sue and recover for any infringement of the '863 Patent.

ACTS GIVING RISE TO THIS ACTION

Infringement of the '863 Patent

13. Plaintiffs restate all of the preceding paragraphs as if fully set forth herein.

14. MMI Genomics has directly infringed, and is currently directly infringing, one or more of the claims of the '863 Patent in violation of 35 U.S.C. § 271 *et seq.* by using, selling, and offering to sell in the United States the dog breed identification services associated with its Canine Heritage XL Breed Test product.

15. Upon information and belief, MMI Genomics is inducing the infringement of one or more of the claims of the '863 Patent in violation of 35 U.S.C. § 271 *et seq.* by inducing others to perform the dog breed identification services associated with its Canine Heritage XL Breed Test product, and MMI Genomics is doing so with the knowledge that its actions are inducing infringing acts.

16. Plaintiffs have been injured and damaged monetarily and otherwise by MMI Genomics's infringement of the '863 Patent. MMI Genomics is therefore liable to Plaintiffs for actual damages suffered by Plaintiffs, and in no event less than a reasonable royalty.

17. Plaintiffs also have been and will continue to be irreparably harmed by MMI Genomics's patent infringement necessitating the entry of a preliminary and permanent injunction to prevent MMI Genomics's further and future infringement of the '863 Patent. Plaintiffs do not have an adequate remedy at law.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request as follows:

A. That this Court enter a judgment that MMI Genomics has infringed and is infringing one or more claims of the '863 Patent;

B. That this Court enter a judgment and order preliminarily and permanently enjoining MMI Genomics, its employees and agents, and any person in active concert or participation with each of them from infringing the '863 Patent;

C. That this Court enter a judgment against MMI Genomics awarding damages adequate to compensate Plaintiffs for the infringement by Defendants of the '863 Patent and any supplemental damages for any continuing post-verdict infringement until entry of a final judgment and cessation of such infringement;

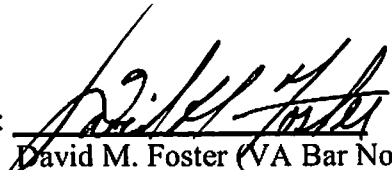
D. That this Court assess pre-judgment and post judgment interest and costs against MMI Genomics, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284;

E. That this Court grant Plaintiffs such other and further relief as the Court deems just, proper, and equitable.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial as to all matters so triable.

Dated: December 17, 2010

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