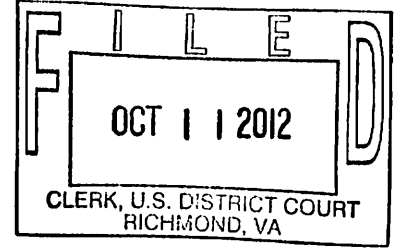


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
~~ALEXANDRIA~~ DIVISION
RICHMOND



GENETIC TECHNOLOGIES LIMITED,)
an Australian corporation,)
)
Plaintiff,)
)
)
v.)
)
GENETICS & IVF INSTITUTE, INC.,)
a Virginia corporation,)
)
Defendant.)

Civil Action No. 3:12cv724

(JURY TRIAL DEMANDED)

COMPLAINT WITH JURY DEMAND

Plaintiff Genetic Technologies Limited (“GTG”) for its Complaint against Defendant Genetics & IVF Institute, Inc. (“GIVF”), alleges as follows:

I. THE PARTIES

1. Plaintiff GTG is an Australian corporation with a principal place of business in Victoria, Australia.
2. Upon information and belief, GIVF is a corporation organized and existing under the laws of the state of Virginia, with its principal place of business located at 3015 Williams Drive, Fairfax, Virginia 22031. GIVF can be served with process through its registered agent, Sean Swindell, 3015 Williams Drive, Suite 202, Fairfax, Virginia 22031.

II. JURISDICTION AND VENUE

3. This Court has exclusive jurisdiction of this action for patent infringement pursuant to 28 U.S.C. § 1338(a).

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

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

6. Upon information and belief, GIVF has minimum contacts with this judicial district such that this forum is a fair and reasonable one. GIVF has also transacted and/or, at the time of the filing of this Complaint, is transacting business within the Eastern District of Virginia. Further, upon information and belief, GIVF has committed acts of patent infringement complained of herein within the Eastern District of Virginia. For these reasons, personal jurisdiction exists over GIVF and venue over this action is proper in this Court under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b).

III. THE PATENT-IN-SUIT

7. On March 18, 1997, United States Patent No. 5,612,179 (“the ’179 Patent”) was duly and legally issued for an “Intron Sequence Analysis Method for Detection of Adjacent and Remote Locus Alleles as Haplotypes.” A true and correct copy of the ’179 Patent is attached as Exhibit A.

8. GTG is the owner of the ’179 Patent by assignment from Genetype AG, who was originally assigned the technology by the inventor Dr. Malcolm Simons, with the exclusive right to enforce and collect damages for infringement of the ’179 Patent during all relevant time periods.

9. The '179 Patent generally relates to methods of analysis of non-coding DNA sequences.

10. The Abstract of the '179 Patent relevantly provides:

The present invention provides a method for detection of at least one allele of a genetic locus and can be used to provide direct determination of the haplotype. The method comprises amplifying genomic DNA with a primer pair that spans an intron sequence and defines a DNA sequence in genetic linkage with an allele to be detected. The primer-defined DNA sequence contains a sufficient number of intron sequence nucleotides to characterize the allele. Genomic DNA is amplified to produce an amplified DNA sequence characteristic of the allele. The amplified DNA sequence is analyzed to detect the presence of a genetic variation in the amplified DNA sequence such as a change in the length of the sequence, gain or loss of a restriction site or substitution of a nucleotide. The variation is characteristic of the allele to be detected and can be used to detect remote alleles.

11. Independent Claims 1 and 26 of the '179 Patent read:

1. A method for detection of at least one coding region allele of a multi-allelic genetic locus comprising: a) amplifying genomic DNA with a primer pair that spans a non-coding region sequence, said primer pair defining a DNA sequence which is in genetic linkage with said genetic locus and contains a sufficient number of non-coding region sequence nucleotides to produce an amplified DNA sequence characteristic of said allele; and b) analyzing the amplified DNA sequence to detect the allele.

26. A DNA analysis method for determining coding region alleles of a multi-allelic genetic locus comprising identifying sequence polymorphisms characteristic of the alleles, wherein said sequence polymorphisms characteristic of the alleles are present in a non-coding region sequence, said non-coding region sequence being not more than about two kilobases in length.

12. The '179 Patent is presumed valid and enforceable pursuant to 35 U.S.C. § 282.

13. The '179 Patent previously was asserted by GTG in the matter of *Genetic Technologies Ltd. v. Applera Corp.*, Case No. C 03-1316-PJH, in the United States District for the Northern District of California ("Applera Action"). The Applera Action ultimately was settled with Applera Corporation taking a license to the '179 Patent, among others.

14. The '179 Patent was the subject of a declaratory judgment action initiated by Monsanto in the matter of *Monsanto Company v. Genetic Technologies Ltd.*, Case No. 06-cv-00989-HEA, in the United States District Court for the Eastern District of Missouri, Eastern Division ("Monsanto Action"). That Monsanto Action ultimately was settled. Monsanto has now taken three licenses to the '179 Patent, among others.

15. The '179 Patent previously was asserted by GTG in the matter of *Genetic Technologies Ltd. v. Beckman Coulter, Inc., et al.*, Case No. 10-cv-0069-BBC, in the United States District Court for the Western District of Wisconsin ("Beckman Coulter Action"). The Beckman Coulter Action was resolved with at least Beckman Coulter, Inc., Gen-Probe, Inc., Interleukin Genetics Incorporated, Molecular Pathology Laboratory Network, Inc., Orchid Cellmark, Inc., Pioneer Hi-Bred International, Inc., and Sunrise Medical Laboratories, Inc. taking a license to the '179 Patent, among others.

16. The '179 Patent recently was asserted by GTG in the matter of *Genetic Technologies Limited v. Agilent Technologies, Inc., et al.*, Case No. 11-cv-01389-WJM-KLM in the United States District Court for the District of Colorado ("Colorado Action"). In the Colorado Action at least Eurofins STA Laboratories, Inc. and GeneSeek, Inc. have taken a license to the '179 Patent, among others.

17. Other actions relating to the '179 Patent remain pending, and GTG has secured over \$15 million in licensing revenue since the filing of the Beckman Coulter Action in 2010.

18. In addition to the licenses identified in the preceding paragraphs, the '179 Patent and related patents have been licensed to at least the following entities: AgResearch Ltd.; ARUP Laboratories, Inc.; Australian Genome Research Facility Ltd.; GeneDX (a subsidiary of Bio

Reference Laboratories); Bionomics Ltd.; BioSearch Technologies Inc.; Pfizer Animal Health; C Y O'Connor ERADE Village Foundation (incorporating the Immunogenetics Research Foundation and the Institute of Molecular Genetics and Immunology Incorporated); Crop and Food Research Ltd.; DNA Diagnostics Ltd.; General Electric Co. and its subsidiary GE Healthcare Bio-Sciences Corp.; Genosense Diagnostics GmbH; Genzyme Corp.; Innogenetics N.V.; Kimball Genetics, Inc.; Laboratory Corporation of America Holdings, Inc.; Livestock Improvement Corporation Ltd.; MetaMorphix, Inc.; Millennium Pharmaceuticals Inc.; Myriad Genetics, Inc.; Nanogen, Inc.; New Zealand Blood Service; Optigen, L.L.C.; Ovita Ltd.; Perlegen Sciences, Inc.; Prometheus Laboratories Inc.; Qiagen, LLC.; Quest Diagnostics Inc.; Sciona, Inc.; Sequenom, Inc.; Syngenta Crop Protection AG; Thermo Fisher Scientific Inc.; TIB MOLBIOL Syntheselabor GmbH; Tm Bioscience Corporation; Gen-Probe, Inc.; and others.

19. Certain claims of the '179 Patent, including Claim 26, recently were subjected to an ex parte reexamination before the United States Patent and Trademark Office ("USPTO") that was initiated by an unknown entity. On February 4, 2010, the USPTO issued a Notice of Intent to Issue Ex Parte Reexamination Certificate indicating that the subject claims were confirmed as valid without amendment. A true and correct copy of that Reexamination Certificate is attached as Exhibit B.

20. The '179 Patent expired on March 9, 2010. However, GTG remains entitled to collect damages for past infringement occurring during the term of the '179 Patent pursuant to 35 U.S.C. §§ 284 and 286.

IV. GIVF'S INFRINGEMENT

21. GIVF is based in Fairfax, Virginia, and claims to have two fully integrated fertility centers in the Washington, DC metropolitan area. GIVF claims to have a reproductive team that provides preimplantation genetic diagnosis ("PGD") for genetic disease prevention and prenatal screening. More specifically, GIVF claims that it has "been an innovator in infertility treatment and genetics care and [has] helped thousands of patients realize their dreams of starting a family."

22. GIVF's marketing materials indicate that GIVF's PGD testing includes testing for cystic fibrosis ("CF") which testing has been linked to non-coding polymorphisms.

23. GIVF's marketing materials indicate that GIVF's testing services are performed by the GIVF Molecular Infectious Disease Lab ("MIDL"), using the polymerase chain reaction ("PCR") amplification technology.

24. Upon information and belief, GIVF has analyzed many non-coding DNA polymorphisms linked to coding region alleles using amplified DNA with a primer pair spanning a non-coding DNA region in the provision of its PGD services and during the term of the '179 Patent.

25. By way of example only, one of the single gene defects for which GIVF provides screening services is CF. By 2011, over 1700 mutations in the Cystic Fibrosis Transmembrane Conductance Regulator gene ("CFTR") had been identified. The CFTR gene has over one thousand polymorphisms in both the coding and the non-coding regions of the gene and is therefore, multi-allelic. The CFTR gene and surrounding sequences are in genetic linkage thus the non-coding variation is characteristic of the coding region allele and the trait. For example,

R117H mutations are modulated by the 5T/7T/9T polypyrimidine tract in intron 8, that exists on the same haplotype GIVF's analysis of the amplified DNA sequence nucleotide to determine the presence of one of more genetic variations allows GIVF to provide its CF PGD services. The testing of a non-coding variation in the CFTR gene such as the poly T, during the term of the '179 Patent directly infringed upon claims of the '179 Patent.

26. Upon information and belief, GIVF had actual knowledge of the '179 Patent during times relevant to this action through at least its awareness of GTG, the knowledge of its employees, and/or its research, development and/or patent application activities.

V. CLAIM FOR RELIEF
(Patent Infringement – U.S. Patent No. 5,612,179)

27. GTG incorporates by reference each and every allegation in paragraphs 1 through 26 as though fully set forth herein.

28. Described herein, GIVF has manufactured, made, had made, used, practiced, imported, provided, supplied, distributed, sold, and/or offered for sale services that infringed one or more claims of the '179 Patent in violation of 35 U.S.C. § 271(a).

29. GTG has been damaged as a result of GIVF's infringing conduct. GIVF is thus liable to GTG in an amount that adequately compensates GTG for such infringement which cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

VI. JURY DEMAND

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

VII. PRAYER FOR RELIEF

GTG requests that the Court find in its favor and against GIVF, and that the Court grant GTG the following relief:

A. Judgment that one or more claims of the '179 Patent has been directly infringed, either literally, and/or under the doctrine of equivalents, by GIVF;

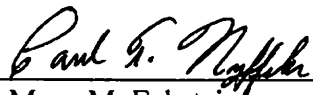
B. Judgment that GIVF account for and pay to GTG all damages to and costs incurred by GTG because of GIVF's infringing activities and other conduct complained of herein in an amount not less than a reasonable royalty;

C. That GTG be granted pre-judgment and post-judgment interest on the damages caused to it by reason of Defendant's infringing activities and other conduct complained of herein; and

D. That GTG be granted such other and further relief as the court may deem just and proper under the circumstances.

Respectfully submitted,

Dated: October 10, 2012

By: 

Maya M. Eckstein
meckstein@hunton.com
Paul Nyffeler
pnyffeler@hunton.com
Hunton & Williams LLP
951 East Byrd Street, East Tower
Richmond, Virginia 23219
(804) 788-8788
(804) 788-8218 (facsimile)

Counsel for Plaintiff

Robert R. Brunelli
rbrunelli@sheridanross.com
Benjamin B. Lieb
blieb@sheridanross.com
SHERIDAN ROSS P.C.
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
(303) 863-9700
(303) 863-0223 (facsimile)