

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PANAGENE, INC.	§	
	§	
Plaintiff,	§	
vs.	§	
	§	Civil Action No. 2:12-cv-00067
BIO-SYNTHESIS, INC.,	§	
	§	
Defendant	§	
	§	

**PLAINTIFF PANAGENE, INC.’S COMPLAINT FOR PATENT INFRINGEMENT AND
PRELIMINARY AND PERMANENT INJUNCTIONS**

Plaintiff Panagene, Inc. (“Panagene”) brings this action against Defendant Bio-synthesis, Inc. (“Biosyn”) alleging causes of action for patent infringement, preliminary injunctive relief and permanent injunctive relief. In support of its causes of action, Panagene alleges as follows:

A. THE PARTIES

1. Panagene is a corporation organized and existing under the laws of Korea with its principal place of business at 816 Tamnip-dong, Yuseong-gu, Daejeon, Korea 305-510.
2. Upon information and belief, Biosyn is a corporation organized and existing under the laws of the State of Texas with a principal place of business at 612 E. Main Street, Lewisville, Texas 75057. Biosyn is doing business in this judicial district. Biosyn may be served with process by serving its registered agent, Miguel Castro at 612 E. Main Street, Lewisville, Texas 75057.

B. JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, Title 35 United States Code, particularly §§ 271 and 281 and Title 28 United States Code, particularly §1338(a).

4. Venue is proper in this Court under Title 28 United States Code §§ 1391(b) and (c) and 1400(b).

C. CLAIMS FOR PATENT INFRINGEMENT – 35 U.S.C. § 271

5. On May 28, 2002, U.S. Patent No. 6,395,474 (“the ’474 patent”), titled “Peptide Nucleic Acids” was issued to Ole Buchardt, Michael Egholm, Peter Nielsen, and Rolf Berg (“The Inventors”). A copy of the ’474 patent is attached hereto as Exhibit A and is expressly made a part hereof.

6. By agreement with The Inventors, Panagene is the exclusive licensee with the rights to enforce the ’474 patent and to collect any and all damages from infringement thereof.

7. On May 27, 2008, U.S. Patent No. 7,378,485 (“the ’485 patent”) was issued for “Peptide Nucleic Acids with Polyamide-Containing Backbones”. A copy of the ’485 patent is attached hereto as Exhibit B and is expressly made a part hereof.

8. By agreement with The Inventors, Panagene is the exclusive licensee with the rights to enforce the ’485 patent and to collect any and all damages from infringement thereof.

9. The ’474 patent and the ’485 patent, in general, relate to Peptide Nucleic Acid (“PNA”) compounds.

10. Pursuant to 35 U.S.C. § 282, both the ’474 patent and the ’485 patent are presumed valid.

11. On information and belief, Biosyn manufactures, uses, and sells PNAs that directly infringe at least claims 1-5, 7, and 9-12 of the ’474 patent and claims 1-3 of the ’485 patent, either literally or under the doctrine of equivalents.

12. Biosyn acknowledges on its publicly available website that PNAs were invented in 1991 by The Inventors. A true and correct copy of an excerpt from Biosyn's website is attached hereto as Exhibit C.

13. In August 2006, representatives of Panagene informed Biosyn's employees that they were the exclusive licensees to the '474 patent. Accordingly, Biosyn has had knowledge of the '474 patent at least as early as August 2006.

14. In May 2008, representatives of Panagene met with Biosyn's employees to discuss licensing of the '474 patent and the '485 patent. Accordingly, Biosyn has had knowledge of the '485 patent at least as early as May 2008.

15. By knowingly manufacturing, using, and/or selling PNAs invented by The Inventors under the '474 patent and the '485 patent, Biosyn has willfully infringed and continues to willfully infringe at least claims 1-5, 7, and 9-12 of the '474 patent and claims 1-3 of the '485 patent, either literally or under the doctrine of equivalents.

16. Biosyn's manufacture and sale of PNAs also indirectly infringes claims 9-12 of the '474 patent.

17. Biosyn has knowledge of the '474 patent and knowingly induces its customers to infringe at least claims 9 through 12 of the '474 patent.

18. Biosyn's sale of PNAs is also a knowing sale of a non-staple article of commerce, the primary purpose of which is to be used in the processes described and claimed in claims 9 through 12 of the '474 patent. Biosyn's manufacture and sale of PNAs therefore contributorily infringes the '474 patent.

19. Biosyn's infringing acts have been, and continue to be, without Panagene's permission, license, or consent.

20. Biosyn continues to manufacture, use, and sell PNAs without a license to either the '474 patent or the '485 patent. As a result, Biosyn acted despite an objectively high likelihood that its actions constituted infringement of a valid patent.

21. Biosyn's infringing acts have been, and continue to be, intentional, willful, and deliberate, with the full knowledge of Panagene's patent rights, thus making this an exceptional case within the meaning of 35 U.S.C. § 285 and entitling Panagene to the recovery of treble damages.

D. CLAIMS FOR INJUNCTIVE RELIEF

22. As a direct and proximate consequence of Biosyn's infringement of the '474 patent and the '485 patent, Panagene has suffered, and will continue to suffer damages, including monetary loss, irreparable injury to its business, reputation, and diminution of the value of the '474 patent and the '485 patent, in amounts not yet determined by Panagene, which by law can in no event be less than a reasonable royalty, unless and until Biosyn is enjoined from their infringing activities.

23. Panagene sells custom PNAs that directly compete with the PNAs sold by Biosyn.

24. Panagene has lost significant market share to Biosyn due to Biosyn's infringement of both the '474 patent and the '485 patent.

25. Monetary damages alone will not be sufficient to compensate Panagene for the damage to its business and for its loss of customers based upon Biosyn's sales of PNAs.

26. Because Panagene has suffered and continues to suffer an irreparable injury based upon Biosyn's infringing sales of PNAs, because monetary damages will not be sufficient to compensate for such damage, and because the public interest would not be disserved by an

injunction, Panagene is entitled to a permanent injunction prohibiting Biosyn from infringing either the '474 patent or the '485 patent.

27. Based upon Biosyn's admission that The Inventors created the PNAs sold by Biosyn, Panagene is likely to succeed on the merits of its infringement claims.

28. Because Panagene is being irreparably harmed by Biosyn and because Panagene is likely to succeed on the merits of its claims, Panagene is entitled to a preliminary injunction prohibiting Biosyn from infringing either the '474 patent or the '485 patent.

Demand for Jury Trial

29. Panagene demands a jury trial on all claims and issues.

Prayer For Relief

Wherefore, Panagene prays that this Court enter judgment in its favor and grant the following relief:

A. A declaration that Biosyn has directly infringed, induced others to infringe or contributed to the infringement of U.S. Patent No. 6,395,474 and U.S. Patent No. 7,378,485;

B. A declaration that Biosyn has willfully and deliberately infringed U.S. Patent No. 6,395,474 and U.S. Patent No. 7,378,485;

C. A finding that, pursuant to 35 U.S.C. § 284, Biosyn must account for actual and treble damages to Panagene by virtue of Biosyn's infringement of U.S. Patent No. 6,395,474 and U.S. Patent No. 7,378,485;

D. that Biosyn be ordered to account for and pay to Panagene all damages caused by the infringement of U.S. Patent No. 6,395,474 and U.S. Patent No. 7,378,485, which by statute can be no less than a reasonable royalty;

E. A finding that this case is exceptional pursuant to 35 U.S.C. § 285, and an award of Panagene's attorneys fees, costs and expenses;

F. A preliminary and permanent injunction against Biosyn and its officers, partners, employees, agents, parents, subsidiaries, attorneys, and anyone acting or participating with Biosyn, precluding the manufacture, use, sale, or offer for sale any product that infringes U.S. Patent No. 6,395,474 or U.S. Patent No. 7,378,485;

G. An order requiring Biosyn to deliver up for impoundment during the pendency of this action and, thereafter, to destroy any and all infringing goods; and

H. An award to Panagene of any other relief to which it is entitled, or which the Court deems just and reasonable.

Respectfully submitted,

Date: February 10, 2012

/s/ Edward W. Goldstein
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