

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

2014 JAN 10 PM 3:48

PEGASUS LABORATORIES, INC.,)
)
 Plaintiff,)
)
 vs.)
)
 LOWLITE INVESTMENTS, INC. d/b/a)
 OLYMPIA COMPOUNDING PHARMACY,)
)
 Defendant.)

Case No.

JURY TRIAL DEMANDED

6-14-CV-51-ORL-18TBS

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Pegasus Laboratories, Inc., by its undersigned attorneys, for its Complaint against Defendant Lowlite Investments, Inc. d/b/a Olympia Compounding Pharmacy alleges as follows:

THE PARTIES

1. Plaintiff Pegasus Laboratories, Inc. (hereinafter, "Pegasus" or "Plaintiff") is a corporation organized and existing under the laws of the State of Missouri, with its principal office located at 8809 Ely St., Pensacola, Florida 32514. Pegasus is a developer, manufacturer, and marketer of animal health products under the PRN Pharmacal brand name.

2. Pegasus is informed and believes, and on that basis alleges that Defendant Lowlite Investments, Inc. d/b/a Olympia Compounding Pharmacy (hereinafter, "Olympia" or "Defendant"), is a corporation organized and existing under the laws of the State of Florida, with its principal office located at 6700 Conroy Windermere Road, Suite 140, Orlando, Florida 32835. Olympia is a pharmacy that engages in compounding medications, including those sold in the animal pharmaceutical industry.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States and is an action for patent infringement under 35 U.S.C. §§ 271, *et seq.*

4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a), because this action arises under the Patent Act set forth at Title 35 of the U.S. Code.

5. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and/or 1400(b) because a substantial part of the events giving rise to the claims occurred in this District and because Olympia is a resident of this District.

6. This Court has personal jurisdiction over Olympia in this action on the grounds that Olympia conducts business in the State of Florida and has committed acts of patent infringement in the State of Florida.

FACTUAL BACKGROUND

The patents at issue

7. U.S. Patent Number 5,747,476, U.S. Patent Number 6,255,308, and U.S. Patent Number 6,448,252 (collectively, the “Patents in Suit”) are directed generally to compositions and methods for treating equines afflicted with equine protozoal myeloencephalitis (“EPM”) with therapeutic compositions comprising pyrimethamine and sulfonamide, including sulfadiazine.

8. U.S. Patent Number 5,747,476 (“the ‘476 Patent”) entitled “TREATMENT OF EQUINE PROTOZOAL MYELOENCEPHALITIS” was duly, validly, and legally issued by the United States Patent and Trademark Office on May 5, 1998. A true and correct copy of the ‘476 Patent is attached hereto as **Exhibit A** and made a part hereof by reference as though fully set forth herein.

9. United States Patent Number 6,255,308 (“the ‘308 Patent”) entitled

“TREATMENT OF EQUINE PROTOZOAL MYELOENCEPHALITIS” was duly, validly and legally issued by the United States Patent and Trademark Office on July 3, 2001. A true and correct copy of the ‘308 Patent is attached hereto as **Exhibit B** and made a part hereof by reference as though fully set forth herein.

10. United States Patent Number 6,448,252 (“the ‘252 Patent”) entitled “TREATMENT OF EQUINE PROTOZOAL MYELOENCEPHALITIS” was duly, validly, and legally issued by the United States Patent and Trademark Office on September 10, 2002. A true and correct copy of the ‘252 Patent is attached hereto as **Exhibit C** and made a part hereof by reference as though fully set forth herein.

IDEXX Laboratories, Inc.’s ownership of the Patents in Suit

11. IDEXX Laboratories, Inc. (“IDEXX”), having a principal office at One IDEXX Drive, Westbrook, Maine 04092, has been the sole assignee of each of the Patents in Suit since at least September, 2004.

12. IDEXX owns the right, title, and interest to the Patents in Suit.

IDEXX’s grant of Exclusive License to Animal Health Pharmaceuticals

13. IDEXX, by an Exclusive License Agreement dated July 9, 2010, granted to Animal Health Pharmaceuticals, LLC (“AHP”) having a principal place of business at 1805 Oak Ridge Circle, Suite 101, P.O. Box 6292, Fairleigh Station, St. Joseph, Missouri 64506, an exclusive nationwide license to make, have made, use, sell, offer to sell, lease, import, export, and develop products covered by the Patents in Suit.

14. IDEXX also granted to AHP per this Exclusive License Agreement the sole right to sublicense the Patents in Suit to alleged infringers.

15. IDEXX further granted to AHP per this Exclusive License Agreement the right to

bring actions for patent infringement against third parties who infringe one or more of the Patents in Suit.

AHP's transfer of rights in the Exclusive License Agreement and ReBalance® Antiprotozoal Oral Suspension Product ("ReBalance® Product") to Pegasus

16. AHP, by an Asset Transfer Agreement dated September 30, 2010, and with IDEXX's consent, validly transferred its right, title, and interest in the Exclusive License Agreement to Pegasus.

17. Thus, Pegasus has the legal right and authority to bring this action and stop infringement of the Patents in Suit.

18. AHP, by this Asset Transfer Agreement, further transferred to Pegasus its marketing rights in the ReBalance® Product. The ReBalance® Product combines sulfadiazine and pyrimethamine and is used for treatment of horses with EPM caused by sarcocystic neurona. The ReBalance® Product is the subject of the Food and Drug Administration Center for Veterinary Medicine ("FDA-CVM") approved New Animal Drug Application 141-240 ("NADA 141-240"), a Freedom of Information Summary of which is attached hereto as **Exhibit D** and made a part hereof by reference as though fully set forth herein. Pegasus is the current sponsor of NADA 141-240.

Olympia's infringement of the Patents in Suit

19. Olympia markets and sells in this District and elsewhere, including via its website (www.olympiapharmacy.com), compounded medication product for treatment of horses with EPM caused by sarcocystic neurona. This compounded medication product for treatment of EPM is compounded from bulk active sulfadiazine and pyrimethamine ingredients. A listing of such product(s), as obtained from Olympia's website, is attached hereto as **Exhibit E**. This compounded medication infringes at least one claim of each of the Patents in Suit.

20. Upon information and belief, Olympia continues to compound, market, and sell its infringing product for treatment of EPM in the state of Florida and elsewhere.

COUNT I
(Infringement of the '476 Patent)

21. Pegasus incorporates by reference all previous allegations as if set forth herein.

22. The '476 Patent is presumed to be valid.

23. Pegasus has complied with any applicable marking requirements of 35 U.S.C. § 287 with respect to the '476 Patent.

24. Olympia has infringed and is infringing at least one claim of the '476 Patent in violation of 35 U.S.C. § 271(a) by compounding, manufacturing, marketing, and selling the infringing product. Olympia is further infringing at least one claim of the '476 Patent in violation of 35 U.S.C. § 271(b) by inducing infringement with its infringing product.

25. Olympia has had actual notice of the Patents in Suit and of Pegasus' rights in the '476 Patent since at least October 3, 2012. Olympia's infringement of the '476 Patent has been and continues to be willful and deliberate.

26. Olympia's infringement of the '476 Patent has caused great damage to Pegasus. The amount of these damages is not yet known, but Pegasus has lost profits and royalties as a result of the infringement and is entitled to damages adequate to compensate it for the infringement in an amount that is in no event less than a reasonable royalty under 35 U.S.C. § 284.

27. Pegasus may also be entitled to recover prejudgment interest, costs, and up to treble damages under 35 U.S.C. § 284.

28. Further, this is an exceptional case under 35 U.S.C. § 285 (e.g., due to the willful nature of Olympia's infringement) and Pegasus should be awarded its attorneys' fees.

29. As a result of Olympia's infringement of the '476 Patent, Pegasus has suffered and continues to suffer irreparable harm and impairment of the value of its patent rights, and is suffering the violation of its patent rights, all of which will continue unless Olympia is permanently enjoined by this Court from infringing the '476 Patent under 35 U.S.C. § 283. Pegasus has no adequate remedy at law.

COUNT II
(Infringement of the '308 Patent)

30. Pegasus incorporates by reference all previous allegations as if set forth herein.

31. The '308 Patent is presumed to be valid.

32. Pegasus has complied with any applicable marking requirements of 35 U.S.C. § 287 with respect to the '308 Patent.

33. Olympia has infringed and is infringing at least one claim of the '308 Patent in violation of 35 U.S.C. § 271(a) by compounding, manufacturing, marketing, and selling the infringing product. Olympia is further infringing at least one claim of the '308 Patent in violation of 35 U.S.C. § 271(b) by inducing infringement with its infringing product.

34. Olympia has had actual notice of the Patents in Suit and of Pegasus' rights in the '308 Patent since at least October 3, 2012. Olympia's infringement of the '308 Patent has been and continues to be willful and deliberate.

35. Olympia's infringement of the '308 Patent has caused great damage to Pegasus. The amount of these damages is not yet known, but Pegasus has lost profits and royalties as a result of the infringement and is entitled to damages adequate to compensate it for the infringement in an amount that is in no event less than a reasonable royalty under 35 U.S.C. § 284.

36. Pegasus may also be entitled to recover prejudgment interest, costs, and up to

treble damages under 35 U.S.C. § 284.

37. Further, this is an exceptional case under 35 U.S.C. § 285 (e.g., due to the willful nature of Olympia's infringement) and Pegasus should be awarded its attorneys' fees.

38. As a result of Olympia's infringement of the '308 Patent, Pegasus has suffered and continues to suffer irreparable harm and impairment of the value of its patent rights, and is suffering the violation of its patent rights, all of which will continue unless Olympia is permanently enjoined by this Court from infringing the '308 Patent under 35 U.S.C. § 283. Pegasus has no adequate remedy at law.

COUNT III
(Infringement of the '252 Patent)

39. Pegasus incorporates by reference all previous allegations as if set forth herein.

40. The '252 Patent is presumed to be valid.

41. Pegasus has complied with any applicable marking requirements of 35 U.S.C. § 287 with respect to the '252 Patent.

42. Olympia has infringed and is infringing at least one claim of the '252 Patent in violation of 35 U.S.C. § 271(a) by compounding, manufacturing, marketing, and selling the infringing product. Olympia is further infringing at least one claim of the '252 Patent in violation of 35 U.S.C. § 271(b) by inducing infringement with its infringing product.

43. Olympia has had actual notice of the Patents in Suit and of Pegasus' rights in the '252 Patent since at least June 21, 2013. Olympia's infringement of the '252 Patent has been and continues to be willful and deliberate.

44. Olympia's infringement of the '252 Patent has caused great damage to Pegasus. The amount of these damages is not yet known, but Pegasus has lost profits and royalties as a result of the infringement and is entitled to damages adequate to compensate it for the

infringement in an amount that is in no event less than a reasonable royalty under 35 U.S.C. § 284.

45. Pegasus may also be entitled to recover prejudgment interest, costs, and up to treble damages under 35 U.S.C. § 284.

46. Further, this is an exceptional case under 35 U.S.C. § 285 (e.g., due to the willful nature of Olympia's infringement) and Pegasus should be awarded its attorneys' fees.

47. As a result of Olympia's infringement of the '252 Patent, Pegasus has suffered and continues to suffer irreparable harm and impairment of the value of its patent rights, and is suffering the violation of its patent rights, all of which will continue unless Olympia is permanently enjoined by this Court from infringing the '252 Patent under 35 U.S.C. § 283. Pegasus has no adequate remedy at law.

PRAYER FOR RELIEF AS TO ALL CLAIMS

WHEREFORE, Plaintiff Pegasus Laboratories, Inc. respectfully prays for the entry of the following orders and judgments against Defendant Olympia Compounding Pharmacy:

- (a) Finding that Olympia infringes, directly or indirectly, each of the Patents in Suit;
- (b) Preliminary and permanent injunctions against Olympia and its parents, subsidiaries, divisions, agents, dealers, officers, employees, successors, and assigns, and all others acting in concert or participation with Olympia from:
 - i. making, using, selling, offering to sell, or importing the inventions claimed in the Patents in Suit; and
 - ii. inducing infringement of the Patents in Suit;
- (c) Finding infringement of the Patents in Suit to be willful;
- (d) Awarding Pegasus such damages, attorneys' fees, costs, prejudgment interest, and

enhanced damages for patent infringement as may be shown by the evidence;

- (e) Finding this to be an exceptional patent infringement case and awarding Pegasus its reasonable attorneys' fees under 35 U.S.C. § 285; and
- (f) Awarding Plaintiff such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, Pegasus demands a trial by jury on all issues so triable.

Dated: January 10, 2014

AKERMAN LLP

By: /s/ Margaret D. Mathews

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