

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

LBS TECHNOLOGIES, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
INCYTE CORPORATION,	:	Civil Action
	:	NO.:
	:	
Defendant.	:	

COMPLAINT

Plaintiff LBS Technologies ("LBS") hereby demand a jury trial and complain of Defendant Incyte Corporation, (Incyte") as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271, et seq. to enjoin and obtain damages resulting from Defendant's unauthorized manufacture, use, sale, offer to sell, license and/or importation into the United States for subsequent use or sale of products, methods, processes, services and/or systems that infringe one or more claims of United States Patent Nos. 5,021,335, 5,168,038, 5,545,522, 5,716,785, 5,891,636, 5,958,688, and 6,291,170 (the "LBS Patents.")
2. This is also an action for unfair competition arising under the Lanham Act of the

United States, Title 15 of the United States Code.

3. LBS seeks injunctive relief to prevent the Defendant from continuing to infringe the LBS Patents, continuing with their acts of unfair competition and continuing with its interference with prospective business relations. LBS also seeks monetary damages.

THE PARTIES

4. LBS is a Delaware corporation having offices at LBS Technologies, Inc., a Delaware corporation with offices at 259 Radnor-Chester Road, Suite 210, Radnor, PA 19087-8303.
5. LBS is the exclusive licensee of the Patents. Pursuant to that license, LBS has the right to bring suit for infringement of the Patents.
6. Incyte Corporation is a Delaware corporation having offices at 60 Executive Blvd., Farmingdale, New York, Experimental Station, Route 411 and Henry Clay Road, Building E336, Wilmington, DE 19880.

JURISDICTION AND VENUE

7. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.
8. Jurisdiction in this Court is conferred pursuant to 28 U.S.C. §§ 1331 and 1338(a).
9. Venue is conferred in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 28 U.S.C. § 1400(b).
10. On information and belief, Incyte is qualified to do business in Pennsylvania

pursuant to the laws of the Commonwealth of Pennsylvania, and has and is doing such business in Pennsylvania and in this district.

COUNT I – PATENT INFRINGEMENT

11. LBS incorporates herein the allegations of Paragraphs 1 through 10 as if fully set forth at length.
12. On information and belief, Products and/or Services furnished by Incyte infringes the LBS Patents, and Incyte has also licensed other parties to the LBS Patents.
13. The making, selling and licensing in this judicial district and elsewhere in the United States constitutes direct and contributory infringement by the defendant of, and active inducement by the defendant to, infringe the LBS patent, all in violation of 35 U.S.C. § 271.
14. Defendant's infringement of the LBS patent has been without license from LBS and in violation of LBS' patent rights, and it is believed that the defendant will continue to infringe LBS' patent rights unless enjoined by this Court.
15. Upon information and belief, defendant's acts of infringement have been willful and deliberate, with full knowledge of LBS' rights in the LBS patent.
16. As a result of defendant's infringement of the LBS patent, LBS has been damaged and will continue to be damaged in an amount to be determined at trial.
17. LBS has suffered and will continue to suffer irreparable injury unless the infringing activities of defendant is enjoined.
18. By virtue of defendant's willful and deliberate infringement, this is an

“exceptional case” within the meaning of 35 U.S.C. § 285.

WHEREFORE, Plaintiff, LBS, prays for the following relief:

A. Judgment for LBS on its cause of action for patent infringement,

B. Preliminary and permanent injunctions enjoining defendant, its officers, directors, agents, and employees and all those in active concert or participation with them who receive notice of the judgment by personal service or otherwise, from making, using, importing, and selling and offering to sell any products, services and/or commercial activities made and/or practiced according to the teachings of the LBS patent and from otherwise infringing, contributing to infringement and actively inducing infringement of the LBS patent,

C. An award of compensatory and punitive damages to LBS by reason of the wrongs committed by defendant, including an award of increased damages pursuant to 35 U.S.C. § 284, for defendant’s willful and deliberate patent infringement,

D. An award of costs of this action together with LBS’ attorney’s fees pursuant to 35 U.S.C. § 265,

E. Such other and further relief as this Court deems just and proper.

COUNT II - VIOLATION OF THE LANHAM ACT - UNFAIR COMPETITION

19. LBS incorporates herein the allegations of Paragraphs 1 through 19 as if fully set forth at length.

20. By the actions alleged herein, defendant has violated 15 U.S.C. § 1125 by using false or misleading descriptions and representations of fact in commercial

advertising or promotion, as well as false designations of origin, in connection with products, services and/or commercial activities in interstate commerce, and which descriptions and representations misrepresent the nature and qualities of LBS' products, services and/or commercial activities, all to the damage of LBS.

21. Those statements of defendant have a tendency to deceive or create confusion in a substantial portion of the intended audience, and that deception or confusion is material and likely to influence investment or purchasing decisions.
22. Those statements of defendant's affect or are likely to affect interstate commerce.
23. LBS has been and will continue to be injured in its commercial interests, business and property, as a result of defendant's statements by such factors as, without limitation, business disruption, loss of present and future customers, loss of goodwill, loss of future sales to present in potential customers and other competitive disadvantages.
24. LBS also believes, and therefore avers, that as a result of the defendant's acts:
 - a. LBS has suffered damages in an amount not yet ascertained; and
 - b. Defendant has obtained and will obtain profits as a result of such violations which it is required to disgorge to LBS .
 - c. Defendant's acts are willful and deliberate.
 - d. This is an exceptional case under 15 U.S.C. § 1117, entitling LBS to an award of attorneys' fees.
 - e. Unless defendant is enjoined it will continue to engage in such activities and

LBS will suffer irreparable harm.

f. LBS 's remedy at law is inadequate by itself to compensate LBS for the injuries inflicted by the defendant.

WHEREFORE, Plaintiff, LBS , prays for the following relief:

A. Judgment for LBS on its cause of action for violation of the Lanham Act,

B. Preliminary and permanent injunctions enjoining defendant, its officers, directors, agents, and employees and all those in active concert or participation with them who receive notice of the judgment by personal service or otherwise, from advertising, promoting, describing, explaining or otherwise communicating in any manner or fashion false and misleading statements about its own products, services and/or commercial activities, and LBS' patent.

C. An award of compensatory and punitive damages to LBS by reason of the wrongs committed by defendant including an award of increased damages pursuant to 35 U.S.C. § 284, for defendant's willful and deliberate actions,

D. An award of costs of this action together with LBS' attorney's fees pursuant to 35 U.S.C. § 265,

E. Such other and further relief as this Court deems just and proper.

COUNT III - VIOLATION OF THE COMMON LAW OF UNFAIR COMPETITION
- PRODUCT DISPARAGEMENT/TRADE LIBEL

25. LBS incorporates herein the allegations of Paragraphs 1 through 99 as if fully set forth at length.
26. Defendant has made false or misleading statements as to LBS' as well as its own products, services and/or commercial activities.
27. Defendant knew or should have known those statements were false and/or acted in reckless disregard of their truth or falsity.
28. Defendant knew or should have known those statements would cause injury and loss to LBS as well as damage to its commercial interests.
29. Defendant intended to cause injury and loss to LBS by its statements.
30. LBS has been and will continue to be injured as a result of defendant's statements, in its commercial interests, business and property, by such factors as, without limitation, business disruption, loss of present and future customers, loss of goodwill, loss of future sales to present in potential customers and other competitive disadvantages.
31. Unless defendant is enjoined it will continue to engage in such activities and LBS will suffer irreparable harm.
32. LBS 's remedy at law is inadequate by itself to compensate LBS for the injuries inflicted by the defendant.
33. LBS is, therefore, entitled to injunctive relief.
34. LBS believes, and therefore avers, that as a result of the defendant's acts:

- a. LBS has suffered damages in an amount not yet ascertained; and
- b. Defendant has obtained and will obtain profits as a result of such violations which it is required to disgorge to LBS .
- c. Defendant's acts are willful and deliberate.
- d. Unless defendant is enjoined it will continue to engage in such activities and LBS will suffer irreparable harm.
- e. LBS 's remedy at law is inadequate by itself to compensate LBS for the injuries inflicted by the defendant.

WHEREFORE, Plaintiff, LBS , prays for the following relief:

A. Judgment for LBS on its cause of action for violation of the common law of unfair competition - product disparagement/trade libel,

B. Preliminary and permanent injunctions enjoining defendant, its officers, directors, agents, and employees and all those in active concert or participation with them who receive notice of the judgment by personal service or otherwise, from advertising, promoting, describing, explaining or otherwise communicating in any manner or fashion disparaging to libelous statements about their own and LBS' products, services and/or commercial activities,

C. An award of compensatory and punitive damages to LBS by reason of the wrongs committed by defendant,

D. An award of costs of this action together with LBS' attorney's fees,

E. Such other and further relief as this Court deems just and proper.

LBS Technologies, Inc.

By Its Attorney,

A handwritten signature in cursive script, appearing to read "Joseph E. Chovanes".

Dated: March 30, 2007

Joseph E. Chovanes, Esq.
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