

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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|-----------------------------|---|------------------------|
| NALCO COMPANY, |) | |
| |) | |
| |) | Civil Action No. _____ |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| BUCKMAN LABORATORIES, INC., |) | |
| |) | |
| Defendant. |) | |
| |) | |

COMPLAINT FOR PATENT INFRINGEMENT

Nalco Company (“Nalco”), for its Complaint, states and alleges as follows:

THE PARTIES

1. Plaintiff, Nalco, is a corporation duly organized and existing under the laws of the State of Delaware and has a principal place of business at 1601 W. Diehl Road, Naperville, Illinois 60563-1198.

2. Defendant, Buckman Laboratories, Inc. (“Buckman”), is a corporation existing under the laws of the State of Tennessee, and has a principal place of business at 1256 North McLean Blvd., Memphis, TN 38108-1241. Buckman is registered to do business in the State of Illinois with an agent for service of process at 200 West Adams St., Chicago, Illinois 60606. Further, upon information and belief, Buckman transacts business in the District through at least a sales representative and has a regular and established place of business at 27W480 Ridgeview St., West Chicago, Illinois, 60185-1516. Further, upon information and belief, Buckman Laboratories, Inc., is a subsidiary of Buckman Laboratories International, Inc.

3. Nalco and Buckman are both involved and active in the sale of chemicals and microbiological activity monitors for industrial processes such as papermaking. Buckman has made, sold, used and is currently offering for sale to its customers a microbiological activity monitor called MicroBio Advisor.

JURISDICTION AND VENUE

4. This is a claim of patent infringement arising under the Acts of Congress relating to patents, 35 U.S.C. §§ 271; 281-285.

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. Personal jurisdiction and venue in this District are proper under 28 U.S.C. § 1391 and 1400(b). Buckman has systematic and continuous contacts with the State of Illinois and this District. It is registered to do business in the State of Illinois with an agent for service of process at 200 West Adams St., Chicago, Illinois 60606. It has a regular and established place of business at 27W480 Ridgeview St., West Chicago, Illinois, 60185-1516, and upon information and belief, transacts business in the District through at least a sales representative.

Count I

Infringement of U.S. Patent No. 7,949,432

7. On May 24, 2011, United States Patent No. 7,949,432 entitled Method of Monitoring Surface Associated Microbiological Activity In Process Streams (“the ’432 patent”) was duly and legally issued to Plaintiff as assignee of the inventor Dr. Laura E. Rice. Plaintiff is the owner of the entire right, title and interest in and to the ’432 patent and has been the owner of the patent throughout the period of Defendant’s infringement and still is the owner thereof. The ’432 patent is attached as Exhibit A.

8. The Defendant has directly infringed and is still directly infringing the '432 patent by using the MicroBio Advisor in a process that infringes the '432 patent, and will continue to do so unless enjoined by this court.

9. Upon information and belief, Defendant has also induced and continues to induce, others to directly infringe the '432 patent by offering to sell, selling, furnishing or providing its MicroBio Advisor to customers and by encouraging and promoting the use by others of the MicroBio Advisor knowing that the use directly infringes the '432 patent. A MicroBio Advisor brochure is attached as Exhibit B. Defendant has instructed and continues to instruct customers and potential customers to use the MicroBio Advisor in a process that directly infringes the '432 patent knowing that the process directly infringes the '432 patent. Defendant has assisted and continues to assist those customers and potential customers in using the MicroBio Advisor in a process that directly infringes the '432 patent knowing that the process directly infringe the '432 patent.

10. Specifically, Defendant has induced at least one mill customer located in the Midwest to directly infringe the '432 patent by selling, furnishing or providing its MicroBio Advisor to the Midwest mill and by encouraging and promoting the use of the MicroBio Advisor in a process that directly infringes the '432 patent through literature such as the brochure attached as Exhibit B and other materials, written and oral, regarding the MicroBio Advisor.

11. Upon belief and information, Defendant is and has been aware of the '432 patent and knows that its sale, furnishing or providing of the MicroBio Advisor and instructions for use of the same induce customers to directly infringe the '432 patent. Defendant's knowledge of the '432 patent, combined with Defendant's instructions for use of the MicroBio Advisor in the

manner specified by the '432 patent, demonstrates the Defendant intended to induce its customers to directly infringe the '432 patent.

12. When using the MicroBio Advisor as directed by Defendant, Defendant's customers, including at least the one identified above, directly infringe the '432 patent by using the MicroBio Advisor in a process that embodies the invention of the '432 patent.

13. Plaintiff has provided Defendant notice by at least the filing of this Complaint.

14. Since at least the filing of this Complaint, Defendant has had actual knowledge of the '432 patent and its infringement of this patent has been and continues to be willful and deliberate.

15. Plaintiff has been damaged by Defendant's infringement of the '432 patent and will continue to be damaged in the future unless Defendant is permanently enjoined from infringing and inducing the infringement of said patent.

Count II

Infringement of U.S. Patent No. 8,012,758

16. On September 06, 2011, United States Patent No. 8,012,758 entitled Method Of Monitoring Microbiological Activity In Process Streams ("the '758 patent") was duly and legally issued to Plaintiff as assignee of the inventors Michael V. Enzien, Dr. Laura E. Rice, and Stephen B. Ashton. Plaintiff is the owner of the entire right, title and interest in and to the '758 patent and has been the owner of the patent throughout the period of Defendant's infringement and still is the owner thereof. The '758 patent is attached as Exhibit C.

17. The Defendant has directly infringed and is still directly infringing the '758 patent by using the MicroBio Advisor in a process that infringes the '758 patent, and will continue to do so unless enjoined by this court.

18. Upon information and belief, Defendant has also induced and continues to induce, others to directly infringe the '758 patent by offering to sell, selling, furnishing or providing its MicroBio Advisor to customers and by encouraging and promoting the use by others of the MicroBio Advisor knowing that the use directly infringes the '758 patent. A MicroBio Advisor brochure is attached as Exhibit B. Defendant has instructed and continues to instruct customers and potential customers to use the MicroBio Advisor in a process that directly infringes the '758 patent knowing that the process directly infringes the '758 patent. Defendant has assisted and continues to assist those customers and potential customers in using the MicroBio Advisor in a process that directly infringes the '758 patent knowing that the process directly infringe the '758 patent.

19. Specifically, Defendant has induced at least one mill customer in the Midwest to directly infringe the '758 patent by selling, furnishing or providing its MicroBio Advisor to the Midwest mill and by encouraging and promoting the use of the MicroBio Advisor in a process that directly infringes the '758 patent through literature such as the brochure attached as Exhibit B and other materials, written and oral, regarding the MicroBio Advisor.

20. Upon belief and information, Defendant is and has been aware of the '758 patent and knows that its sale, furnishing or providing of the MicroBio Advisor and instructions for use of the same induce customers to directly infringe the '758 patent. Defendant's knowledge of the '758 patent, combined with Defendant's instructions for use of the MicroBio Advisor in the

manner specified by the '758 patent, demonstrates the Defendant intended to induce its customers to directly infringe the '758 patent.

21. When using the MicroBio Advisor as directed by Defendant, Defendant's customers, including at least the one identified above, directly infringe the '758 patent by using the MicroBio Advisor in a process that embodies the invention of the '758 patent.

22. Plaintiff has provided Defendant notice by at least the filing of this Complaint.

23. Since at least the filing of this Complaint, Defendant has had actual knowledge of the '758 patent and its infringement of this patent has been and continues to be willful and deliberate.

24. Plaintiff has been damaged by Defendant's infringement of the '758 patent and will continue to be damaged in the future unless Defendant is permanently enjoined from infringing and inducing the infringement of said patent.

Count III

Infringement of U.S. Patent No. 7,981,679

25. On July 19, 2011, United States Patent No. 7,981,679 entitled Method Of Monitoring Bulk (Total) Microbiological Activity In Process Streams ("the '679 patent") was duly and legally issued to Plaintiff as assignee of the inventor Dr. Laura E. Rice. Plaintiff is the owner of the entire right, title and interest in and to the '679 patent and has been the owner of the patent throughout the period of Defendant's infringement and still is the owner thereof. The '679 patent is attached as Exhibit D.

26. The Defendant has directly infringed and is still directly infringing the '679 patent by using the MicroBio Advisor in a process that infringes the '679 patent, and will continue to do so unless enjoined by this court.

27. Upon information and belief, Defendant has also induced and continues to induce, others to directly infringe the '679 patent by offering to sell, selling, furnishing or providing its MicroBio Advisor to papermaking customers and by encouraging and promoting the use by others of the MicroBio Advisor knowing that the use directly infringes the '679 patent. A MicroBio Advisor brochure is attached as Exhibit B. Defendant has instructed and continues to instruct customers and potential customers to use the MicroBio Advisor in a process that directly infringes the '679 patent knowing that the process directly infringes the '679 patent. Defendant has assisted and continues to assist those customers and potential customers in using the MicroBio Advisor in a process that directly infringes the '679 patent knowing that the process directly infringe the '679 patent.

28. Specifically, Defendant has induced at least one mill customer located in the Midwest to directly infringe the '679 patent by selling, furnishing or providing its MicroBio Advisor to the Midwest mill and by encouraging and promoting the use of the MicroBio Advisor in a process that directly infringes the '679 patent through literature such as the brochure attached as Exhibit B and other materials, written and oral, regarding the MicroBio Advisor.

29. Upon belief and information, Defendant is and has been aware of the '679 patent and knows that its sale, furnishing or providing of the MicroBio Advisor and instructions for use of the same induce customers to directly infringe the '679 patent. Defendant's knowledge of the '679 patent, combined with Defendant's instructions for use of the MicroBio Advisor in the

manner specified by the '679 patent, demonstrates the Defendant intended to induce its customers to directly infringe the '679 patent.

30. When using the MicroBio Advisor as directed by Defendant, Defendant's customers, including at least the one identified above, directly infringe the '679 patent by using the MicroBio Advisor in a process that embodies the invention of the '679 patent.

31. Plaintiff has provided Defendant notice by at least the filing of this Complaint.

32. Since at least the filing of this Complaint, Defendant has had actual knowledge of the '679 patent and its infringement of this patent has been and continues to be willful and deliberate.

33. Plaintiff has been damaged by Defendant's infringement of the '679 patent and will continue to be damaged in the future unless Defendant is permanently enjoined from infringing and inducing the infringement of said patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

a. A judgment that Defendant has infringed United States Patent Nos. 7,949,432; 8,012,758; and 7,981,679;

b. An injunction enjoining and restraining Defendant, its officers, directors, agents, servants, employees, customers, attorneys and all others acting under or through it, directly or indirectly, from infringing United States Patent Nos. 7,949,432; 8,012,758; and 7,981,679;

c. A judgment and order requiring Defendant to pay damages under 35 U.S.C. § 284, including treble damages for willful infringement as provided by 35 U.S.C. § 284, with interest;

d. A judgment and order directing Defendant to pay the costs of this action (including all disbursements) and attorney fees as provided by 35 U.S.C. § 285, with interest; and

e. Such other and further relief as this Court may deem just and equitable.

DEMAND FOR A JURY TRIAL

Nalco hereby demands a trial by jury of all issues so triable.

Respectfully Submitted,

Date: January 17, 2014

s/Anthony R. Zeuli
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