

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TET SYSTEMS GMBH & CO. KG,

Plaintiff,

-v-

CD BIOSCIENCES, INC., WAYNE ZHANG
and DONGHAI CHEN,

Defendants.

Civil Action No.

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

Plaintiff TET Systems GmbH & Co. KG (“TET”) hereby brings this action against defendants CD Biosciences, Inc., Wayne Zhang and Donghai Chen for infringement of United States Patent No. 6,087,166, United States Patent No. 5,654,168 and United States Patent No. 7,541,446 and alleges as follows:

OVERVIEW AND THE PARTIES

1. This is an action for patent infringement arising under the patent laws of the United States.
2. TET is a corporation organized and existing under the laws of Germany, having its principal place of business at Im Neuenheimer Feld 582, D-69120 Heidelberg, Germany.
3. CD Biosciences is a domestic corporation organized under the laws of New York with a principal place of business at 45-16 Ramsey Road, Shirley, New York 11967.

4. Wayne Zhang is the Chief Executive Officer of CD Biosciences and, upon information and belief, is a resident of New York.

5. Donghai Chen is the President of CD Biosciences and, upon information and belief, is a resident of New York.

JURISDICTION AND VENUE

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

7. This Court has personal jurisdiction over CD Biosciences, Zhang and Chen by virtue of CD Biosciences maintaining its corporate headquarters and Zhang and Chen residing in this district, among other things.

8. Venue is proper in this Court under 28 U.S.C. §§ 1391(c), 1391(d), and 1400(b).

THE TET SYSTEM

9. TET was founded by prominent academic researchers, two of whom – Prof. Dr. Hermann Bujard and Dr. Manfred Gossen – invented and patented a system to modify cells to control gene expression in eukaryotic cells (the “Tet System”).

10. Using the Tet System, higher cells and entire organisms can be used as hosts in assays, or screening tests that control target gene expression via external stimuli. Cell-based screening assays can be useful in discovering and profiling the activity of chemical compounds versus medically-relevant targets, including, for example, antiviral activity against the Hepatitis virus.

11. Among the patents covering the components of the Tet System is United States Patent No. 6,087,166 entitled “Transcriptional Activators With Graded Transactivation Potential” (“the ‘166 Patent”). The ‘166 Patent was duly and legally issued by the United States Patent and Trademark Office on July 11, 2000. A copy of the ‘166 Patent is attached to this complaint as Exhibit A.

12. Another patent covering the components of the Tet System is United States Patent No. 5,654,168 entitled “Tetracycline-Inducible Transcriptional Activator and Tetracycline-Regulated Transcription Units” (“the ‘168 Patent”). The ‘168 Patent was duly and legally issued by the United States Patent and Trademark Office on August 5, 1997. A copy of the ‘168 Patent is attached to this complaint as Exhibit B.

13. Another patent covering the components of the Tet System is United States Patent No. 7,541,446 entitled “Tet Repressor-Based Transcriptional Regulatory Proteins” (“the ‘446 Patent”). The ‘446 Patent was duly and legally issued by the United States Patent and Trademark Office on June 2, 2009. A copy of the ‘446 Patent is attached to this complaint as Exhibit C.

14. TET is the owner, by assignment, of all rights, title and interest in the ‘166, ‘168 and ‘446 Patents (collectively, the “Asserted Patents”).

15. Broadly speaking, the Asserted Patents disclose and claim a system and method of providing accurate and reproducible control of expression of a gene of interest using tetracycline or a tetracycline analogue as the controlling effector molecule, in order to study the effects of such genes in cells and animals. The Tet System has been instrumental in understanding among others pathological processes such as

cancer development and metastasis. It has also been instrumental in screening new drug compounds in cellular and animal models and to identify the activity of compounds to evaluate their potential use as drugs. Claims of the Asserted Patents disclose and claim, *inter alia*, a host cell useful for regulating the expression of genes in cells.

16. The technology in the Asserted Patents has been recognized in the scientific literature as a broadly and successfully applied system for controlled gene expression in eukaryotes, *i.e.*, organisms made up of cells that possess a membrane-bound nucleus containing genetic material.

17. TET has commercially embodied features claimed in the Asserted Patents.

DEFENDANTS' INFRINGING ACTIVITIES

18. CD Biosciences is a biomedical company that describes itself as a company providing “comprehensive biotechnology and pharmaceutical array services and products for high-throughput analysis... [and] the development of high quality tissue, antibody, protein and cell array technology to efficiently analyze the concurrent expression and function of proteins involved in inflammation, angiogenesis, apoptosis, cell growth, and signal transduction from a single biological sample.”

19. CD Biosciences, Zhang and Chen conduct business using a variety of assumed trade names, including Creative Bioarray, Creative Biomart, CD Genomics, Creative Diagnostics, Profacgen, and Creative Biolabs.

20. CD Biosciences, Zhang and Chen have infringed at least Claims 23 and 24 of the '166 Patent, Claims 15, 16, 18 and 19 of the '168 patent and Claims 2 and 8, 9 of the '446 Patent by using, selling, and offering to sell in the United States products and

services that directly infringe those claims either literally or under the doctrine of equivalents (the “Accused Products”). The Accused Products and services include, at least, the sale of inducible pluripotent cell lines (catalog numbers CSC-C1272, CSC-C1273, and CSC-C1274) which allow the generation of secondary transgenic mouse lines with the desired phenotype.

21. CD Biosciences, Zhang and Chen are aware of the existence of the Asserted Patents and TET put them on notice that their use of the inventions described in the Asserted Patents was unauthorized.

22. CD Biosciences, Zhang and Chen have ignored TET and its offer to license TET’s technology.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 6,087,166

23. TET realleges paragraphs 1–22 as if fully set forth herein.

24. CD Biosciences, Zhang and Chen use, sell, and offer to sell products and services that infringe, either directly or under the doctrine of equivalents, each of the elements of one or more claims of the ‘166 Patent, without license from TET, in violation of 35 U.S.C. § 271 in this judicial district and possibly elsewhere.

25. CD Biosciences, Zhang and Chen have infringed and are infringing the ‘166 Patent by making, using, selling, offering for sale, and/or importing, without authority, products and services that are covered by one or more claims of the ‘166 Patent, including but not limited to the Accused Products.

26. CD Biosciences, Zhang and Chen have contributed to and/or induced and will continue to contribute to and/or induce the infringement of the ‘166 Patent by others

in this District and elsewhere in the United States, with the direct infringement being accomplished by end users of at least the Accused Products.

27. TET has been and continues to be damaged by defendants' infringement of the '166 Patent in an amount to be determined at trial.

28. TET has suffered irreparable injury for which there is no adequate remedy at law and will continue to suffer such irreparable injury unless defendants' infringement of the '166 Patent is enjoined by this Court.

29. Defendants' infringement of the '166 Patent is willful and exceptional and entitles TET to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

COUNT II: INFRINGEMENT OF U.S. PATENT NO. 5,654,168

30. TET realleges paragraphs 1–22 as if fully set forth herein.

31. CD Biosciences, Zhang and Chen use, sell, and offer to sell products and services that infringe, either directly or under the doctrine of equivalents, each of the elements of one or more claims of the '168 Patent, without license from TET, in violation of 35 U.S.C. § 271 in this judicial district and possibly elsewhere.

32. CD Biosciences, Zhang and Chen have infringed and are infringing the '168 Patent by making, using, selling, offering for sale, and/or importing, without authority, products and services that are covered by one or more claims of the '168 Patent, including but not limited to the Accused Products.

33. CD Biosciences, Zhang and Chen have contributed to and/or induced and will continue to contribute to and/or induce the infringement of the '168 Patent by others

in this District and elsewhere in the United States, with the direct infringement being accomplished by end users of at least the Accused Products.

34. TET has been and continues to be damaged by defendants' infringement of the '168 Patent in an amount to be determined at trial.

35. TET has suffered irreparable injury for which there is no adequate remedy at law and will continue to suffer such irreparable injury unless defendants' infringement of the '168 Patent is enjoined by this Court.

36. Defendants' infringement of the '168 Patent is willful and exceptional and entitles TET to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

COUNT III: INFRINGEMENT OF U.S. PATENT NO. 7,541,446

37. TET realleges paragraphs 1–22 as if fully set forth herein.

38. CD Biosciences, Zhang and Chen use, sell, and offer to sell products and services that infringe, either directly or under the doctrine of equivalents, each of the elements of one or more claims of the '446 Patent, without license from TET, in violation of 35 U.S.C. § 271 in this judicial district and possibly elsewhere.

39. CD Biosciences, Zhang and Chen have infringed and are infringing the '446 Patent by making, using, selling, offering for sale, and/or importing, without authority, products and services that are covered by one or more claims of the '446 Patent, including but not limited to the Accused Products.

40. CD Biosciences, Zhang and Chen have contributed to and/or induced and will continue to contribute to and/or induce the infringement of the '446 Patent by others

in this District and elsewhere in the United States, with the direct infringement being accomplished by end users of at least the Accused Products.

41. TET has been and continues to be damaged by defendants' infringement of the '446 Patent in an amount to be determined at trial.

42. TET has suffered irreparable injury for which there is no adequate remedy at law and will continue to suffer such irreparable injury unless defendants' infringement of the '446 Patent is enjoined by this Court.

43. Defendants' infringement of the '446 Patent is willful and exceptional and entitles TET to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

JURY DEMAND

TET requests a trial by jury for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, TET prays for relief as follows:

1. Judgment that defendants have infringed each and every one of the Asserted Patents as alleged herein;
2. Compensatory damages in an amount according to proof, and in no event less than a reasonable royalty, which should be trebled pursuant to 35 U.S.C. § 284;
3. Prejudgment interest on the compensatory damages awarded to TET;
4. Post-judgment interest on all sums awarded to TET from the date of judgment;

5. A preliminary and permanent injunction forbidding Wayne Zhang, Donghai Chen, CD Biosciences and its officers, agents, servants, employees, and attorneys, and all those in active concert or participation with them, from further infringing the Asserted Patents.

6. A finding that this case is “exceptional” and an award to TET of its reasonable attorneys’ fees, expenses, and costs in this action pursuant to 35 U.S.C. § 285; and

7. Any and all other relief that the Court deems just and equitable.

Dated: June 27, 2014

Respectfully submitted,

By: /s/ John F. Olsen
John F. Olsen

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