

KRISTINE E. JOHNSON (7190)
JULIETTE P. WHITE (9616)
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Telephone: 801.532.1234
Facsimile: 801.536.6111
ecf@parsonbehle.com
Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION**

THORNE RESEARCH, INC. and SOFTGEL
FORMULATORS, INC.,

Plaintiffs,

vs.

ATLANTIC PRO-NUTRIENTS, INC. d/b/a/
XYMOGEN,

Defendant.

Case No. 2:13-cv-00784

Judge Ted Stewart

FIRST AMENDED COMPLAINT

Plaintiffs Thorne Research, Inc. ("Thorne") and Softgel Formulators, Inc. ("SFI"), (collectively "Plaintiffs") hereby complain and allege against defendant Atlantic Pro-Nutrients, Inc. d/b/a/ Xymogen ("Xymogen") as follows:

PARTIES

1. Plaintiff Softgel Formulators, Inc., is a California corporation, with its corporate offices located at 1215 Kelsford Court, Westlake Village, California, 91361. SFI is the owner of United States Patent No. 8,491,888, titled "Highly Absorbable Coenzyme Q10 Composition & Method of Producing Same."

2. Plaintiff Thorne Research, Inc., is an Idaho corporation, with its corporate offices located at 25820 Highway 2 West Dover, Idaho, 83825. Thorne is the exclusive licensee of United States Patent No. 8,491,888.

3. Plaintiffs are informed and believe, and on that basis allege, that defendant Xymogen is an Illinois corporation, with its corporate offices located at 6900 Kingspointe Parkway, Orlando, Florida 32819.

JURISDICTION AND VENUE

4. This civil action for patent infringement arises under the patent laws of the United States, specifically under Title 35 of the United States Code, Sections 271, *et seq.* Subject matter jurisdiction in this Court is founded upon 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over the Defendant because it regularly conducts business in this district and has committed acts in this judicial district which give rise to this action. On information and belief, Xymogen sells, offers for sale, and has sold infringing products to residents of this jurisdiction. On information and belief, Xymogen has business relationships with multiple businesses in this district to which it sells, offers for sale, has sold, and/or advertises its infringing products.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), (c) and/or 28 U.S.C. § 1400(b).

GENERAL ALLEGATIONS

7. Thorne is a nutraceutical company that makes high-quality dietary supplements. Thorne markets and sells a wide variety of dietary supplements aimed at enhancing the health and well-being of individuals. Thorne's products focus on a variety of areas related to health and wellness including immune system support, cardiovascular support, and women's health. Thorne markets and sells its products directly to licensed healthcare practitioners and pharmacies throughout the United States and the world.

8. Thorne sells nutritional supplements containing a crystal-free preparation of coenzyme Q10 that has greater absorption rates than other comparable products on the market.

FIRST CLAIM FOR RELIEF

Patent Infringement Against Xymogen

9. Thorne incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

10. United States Patent No. 8,491,888 (the "'888 Patent") was duly and legally issued by the United States Patent and Trademark Office on July 23, 2013. SFI is the owner of the '888 Patent, and Thorne is the exclusive licensee. A true and correct copy of the '888 Patent is attached hereto and incorporated herein by reference as Exhibit 1.

11. Xymogen is infringing, contributing to the infringement of, and/or inducing others to infringe the '888 Patent by making, manufacturing, promoting, marketing, advertising, distributing, offering for sale and selling and/or causing to be offered or sold certain Coenzyme

Q10 products, including CoQmax-100 CF, that infringe at least the following claims of the '888 Patent: Claims 1-5 and 11-15.

12. Plaintiffs have been damaged and have suffered irreparable injury due to Defendants' acts of infringement, and will continue to suffer irreparable injury unless Defendants' acts are enjoined.

13. Thorne has suffered and will continue to suffer damage to its business, including, without limitation, lost profits, loss of business reputation, loss of business opportunities, and loss of market share, by reason of Defendants' acts of patent infringement as alleged herein. SFI has suffered and will continue to suffer substantial damage in the form of reduced royalty payments by reason of Defendants' acts of patent infringement and the resulting reduction in Thorne's sales revenues. Plaintiffs are entitled to recover from Defendants the damages sustained as a result of Defendants' acts.

14. Defendants have willfully infringed the '888 Patent.

15. Defendants' acts make this an exceptional case within the meaning of 35 U.S.C. § 285.

DEMAND FOR JURY TRIAL

16. Plaintiffs demand a trial by jury on all matters herein so triable

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for Judgment as follows:

a. That Defendant has infringed, contributed to the infringement of, and induced infringement of, literally and/or under the doctrine of equivalents, the asserted claims of the '888 Patent;

b. That Defendant and its subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all other persons acting in concert or in participation with them, be permanently enjoined from infringing the '888 patent, and specifically from directly or indirectly making, using, selling, offering for sale, or importing any products or services embodying the inventions of the '888 Patent, including, without limitation, Xymogen's CoQmax-100 CF products, during the life of the claims of the '888 Patent without Plaintiffs' express written authority;

c. That Plaintiffs be awarded all damages attributable to Defendant's infringement of the '888 Patent in an amount to be proven at trial, but not less than a reasonable royalty;

d. That Defendant be ordered to deliver to Plaintiffs, for destruction at Plaintiffs' option, all products that infringe the '888 Patent;

e. That this case be deemed "exceptional" within the meaning of 35 U.S.C. § 285;

f. That Plaintiffs be awarded their reasonable attorneys' fees incurred in connection with this matter;

g. That Plaintiffs be awarded enhanced damages and/or costs pursuant to 35 U.S.C. § 285 and/or other applicable law;

h. That Plaintiffs be awarded the costs of suit, and an assessment of interest;
and,

i. That the Court award Plaintiffs such other, further, and different relief as
the evidence may require and as the Court deems proper under the circumstances.

DATED this 7th day of November, 2014.

PARSONS BEHLE & LATIMER

/s/ Kristine E. Johnson
KRISTINE E. JOHNSON
JULIETTE P. WHITE
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of November, 2014, I caused the foregoing document to be filed via the Court's ECF system, which sent notice to all counsel of record.

/s/ Kristine E. Johnson

Kristine E. Johnson