

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ROXLOR, LLC,

Plaintiff,

v.

KERAPLAST TECHNOLOGIES, LLC

Defendant.

Civ. No. 1:14-cv-01524-GMS

DEMAND FOR JURY TRIAL

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Roxlor, LLC (“Roxlor”), by its attorneys, files this complaint for a declaratory judgment against Keraplast Technologies, LLC (“Keraplast”), and hereby alleges as follows:

NATURE OF THE ACTION

1. This action is based on the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*, with a specific remedy sought under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. An actual, substantial, and continuing justiciable controversy exists between Roxlor and Keraplast with respect to the infringement of the ‘327 Patent that requires a declaration of rights by this Court.

THE PARTIES

2. Plaintiff Roxlor is a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at 1013 Centre Road, Suite 106, Wilmington, DE 19805.

3. On information and belief, Keraplast is a limited liability company organized and existing under the laws of the State of Texas, having its principle place of business at 19210 Huebner Road, Suite 103, San Antonio, Texas.

4. On information and belief Keraplast is the owner of U.S. Patent No. 7,148,327 (“the ‘327 Patent”) entitled “Production of Soluble Keratin Derivaties.” The ‘327 bears an issuance date of December 12, 2006. A copy of the ‘327 Patent is attached hereto at Exhibit 1.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over these claims for declaratory relief arising under the patent laws of the United States, pursuant to 28 U.S.C. §§ 1331, 1338(a), and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

6. This Court has personal jurisdiction over Keraplast by virtue of its purposeful contacts with this District, such that it could reasonably expect to be haled into Court in this District. For example, Keraplast has and continues to transact business with Roxlor, entered into agreements with Roxlor, including a license to, among other things, the ‘327 Patent, and has shipped product to customers in the State of Delaware, such as Roxlor. As a result, Keraplast has constitutionally sufficient contacts with Delaware so as to make personal jurisdiction proper in this Court.

7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b).

THE PRESENCE OF ACTUAL CONTROVERSY

8. Headquartered in Wilmington, Delaware, Roxlor is a supplier of nutraceutical and cosmeceutical ingredients, including Cynatine®, an ingredient comprised of soluble keratin peptides.

9. Keraplast is a manufacturer of keratin ingredients and keratin based products.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. Keraplast has consistently maintained that Roxlor would infringe upon its intellectual property, including the '327 Patent, without a license.

13. In a telephone conversation on November 18, 2014 between Robert Veghte, president of Roxlor, and Rob Kelly, Keraplast's Interim CEO, Mr. Veghte explained to Mr. Kelly, among other issues, that the process in which Roxlor's soluble keratin peptide product is made would not come within the scope of the '327 Patent.

14. Mr. Veghte wrote to Mr. Kelly the next day confirming their telephone conversation and offering to meet in-person with each party's respective counsel to discuss these issues, including the scope of the '327 Patent. [REDACTED]

[REDACTED]

15. Mr. Kelly responded to Mr. Veghte by letter dated December 3, 2014. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Upon information and belief, the patents Mr. Kelly referred to in his letter include the '327 Patent. Mr. Kelly also rejected Mr. Veghte's offer of an in-person meeting to discuss the scope of the '327

Patent, stating that “[h]aving already gone through these issues with you, we currently see no benefit in meeting as you have requested.” No in-person meeting has yet occurred between the parties.

16. Therefore, an actual controversy exists between Roxlor and Keraplast with respect to whether Roxlor’s past and ongoing activities infringe any claim of the ‘327 Patent. Keraplast continues to threaten Roxlor regarding its importing, purchasing, using, offering to sell, and selling its Cynatine® products, which directly impacts Roxlor’s business activities. Roxlor will suffer concrete and imminent harm through Keraplast’s threats and a favorable decision holding that Roxlor does not infringe any claim of the ‘327 Patent will stop the imminent harm.

COUNT I
DECLARATION OF NON-INFRINGEMENT OF U.S. PATENT NO. 7,148,327

17. Roxlor repeats and re-alleges the allegations of paragraphs 1 - 22 as if fully set forth herein.

18. This is an action for declaratory judgment of non-infringement of the ‘327 Patent.

19. Keraplast has alleged and continues to allege that the process employed by Roxlor infringes and will continue to infringe the ‘327 Patent.

20. Roxlor asserts that the process in which Roxlor’s soluble keratin peptide product is made is not covered by the ‘327 Patent and that Roxlor does not and has not directly infringed, contributed to the infringement of, or induced others to infringe, any claim of the ‘327 patent, either literally or under the doctrine of equivalents.

21. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

22. A judicial declaration is necessary and appropriate so that Roxlor may ascertain its rights regarding the '327 Patent.

JURY DEMAND

In accordance with Rule 38 of the Federal Rules of Civil Procedure and Rule 38.1 of the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware, Roxlor respectfully demands a jury trial of all issues triable to a jury in this action.

PRAYER FOR RELIEF

WHEREFORE, Roxlor respectfully requests the following relief:

- (a) A declaration that Roxlor has not infringed and does not infringe any claim of the '327 Patent;
- (b) An injunction against Keraplast and its officers, agents, servants, employees, attorneys, and others in active concert or participation with them from asserting infringement or instituting any legal action for infringement of the '327 Patent against Roxlor or its customers or end users of its products and services;
- (c) An order declaring that this is an exceptional case and awarding Roxlor its costs, expenses, disbursements, and reasonable attorney fees under 35 U.S.C. § 285 and all other applicable statutes, rules and common law; and

(d) Such other and further relief as this Court may deem just and proper;

DATED: April 24, 2015

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